

No. 2977

United States
Circuit Court of Appeals *4*
For the Ninth Circuit.

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG CO., or ORR PHARMACY,

Appellants,

vs.

THE COCA COLA COMPANY,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

Filed

APR 26 1917

F. D. Monckton,
Clerk.

No.

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Circuit Court of Appeals
For the Ninth Circuit.

THE COCA COLA COMPANY,
Appellee.

vs.

ROSE ORR and FRANK L. ORR, doing business as
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

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Bank Building, Los Angeles, California.

For Appellee:

O'MELVENY, STEVENS & MILLIKIN and
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Candler Building, Atlanta, Georgia.

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG CO., or ORR PHARMACY,
Defendants.

In Equity.

Citation.

The United States of America—ss.

To the Coca Cola Company, Complainant, and to
Messrs. O'Melveny, Stevens and Millikin and
Messrs. Candler, Thompson and Hirsch, Solicitors
for Complainant:

Whereas, the defendants, Rose Orr and Frank L. Orr, doing business as Orr Drug Co., or Orr Pharmacy, have lately appealed to the United States Circuit Court of Appeals in and for the Ninth Circuit, from an order made and entered in the above-entitled action on the 5th day of February, 1917, granting a motion to dismiss plaintiff's bill of complaint and from the decree entered in said cause on the 13th day of February, 1917, dismissing the said plaintiff's bill of complaint, said order and decree being in favor of the said plaintiff and against the said defendants; and

Whereas, the said defendants, Rose Orr and Frank L. Orr, doing business as Orr Drug Co., or Orr Pharmacy, have filed the security required by law;

You are therefore hereby cited to appear before the

said United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, in the state of California, within thirty days from the date of this writ, pursuant to the appeal filed in the clerk's office of the District Court of the United States for the Southern District of California, Southern Division, to show cause, if any there be, why the said order and decree in the said petition for appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Oscar A. Trippet, judge of the United States District Court for the Southern District of California, Southern Division, this 14th day of February, 1917.

OSCAR A. TRIPPET,
United States District Judge for the Southern District
of California.

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG CO., or ORR PHARMACY,
Defendants.

In Equity.

AFFIDAVIT OF SERVICE.

State of California, County of Los Angeles—ss.

Sidney J. Parsons, being first duly sworn, deposes

and says: That he is counsel and attorney for the defendants in the above-entitled action; that on the 14th day of February, 1917, at 2:30 o'clock p. m. of said day he served the citation in the above-entitled action upon the solicitors and attorneys for the plaintiff, by delivering to and leaving the same with Messrs. O'Melveny, Stevens and Millikin, at their office, 811 to 826 Title Insurance Building, corner of Fifth & Spring streets in the city of Los Angeles, California, in the manner following, to-wit: that a true copy of said citation was left with their stenographer, a person of legal age, in the presence of one of their clerks, Mr. Macdonald and Mr. Stevens being absent from the office at the time; that thereafter Henry Stevens, Esq., called this affiant on the telephone and stated that he preferred to have Mr. Macdonald attend to the matter. That this affiant was unable to find Mr. Macdonald but that said papers were left with the solicitors and attorneys for said plaintiff and this affidavit is made accordingly.

Further this affiant saith not.

SIDNEY J. PARSONS.

Subscribed and sworn to before me this 14th day of February, 1917.

(Seal)

NEIL S. McCARTHY,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. C63. In the District Court of the United States for the Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr and Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy, de-

fendants. In equity. Citation. Filed Feb. 14, 1917. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. S. J. Parsons, attorney for defendants. (1004 Trust & Sav. Bldg.)

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG COMPANY, or ORR PHAR-
MACY,

Defendant.

In Equity. No.

Application for Injunction, &c.

Bill of Complaint.

To the Honorable, the Judges of the District Court of
the United States for the Southern District of
California, Southern Division:

The Coca Cola Company, complainant, respectfully represents that it is a corporation organized, existing and doing business under and by virtue of the laws of the state of Georgia, and having its principal office and place of business in the city of Atlanta, in the state of Georgia; and being a citizen of the state of Georgia, within the meaning of the Constitution and laws of the United States; and that the defendants, Rose Orr and Frank L. Orr, are residents and citizens of the state of California, and having their principal place

of business in and being residents and inhabitants of Los Angeles, in the county of Los Angeles, state of California, and within the Southern District of California; and being citizens and residents of the state of California, within the meaning of the Constitution and laws of the United States.

That the jurisdiction of this court arises by reason of the diversity of citizenship of the parties hereto, and in that the matter here in dispute exceeds the sum or value of three thousand dollars, exclusive of interest and costs.

And thereupon, your orator complains, and says:

First: That it is and has been since the year 1892, continuously engaged in the manufacture and sale of a certain beverage, known as Coca Cola, which beverage is of a distinctive color and flavor, and for which said product under said name, your orator has established a large and valuable trade in the city of Los Angeles, California, and elsewhere, antecedent to the inequitable conduct of defendant hereinafter alleged.

Second: That said beverage is made in the form of a syrup by your orator, which said syrup when mixed with carbonated water in certain proportions, forms a soft drink or beverage sold and dispensed at soda fountains or in bottles to consumers over almost all of the United States, and several foreign countries and that very large quantities of said syrup are constantly manufactured by your orator to supply the large demand therefor.

Third: That your orator has expended vast sums of money in advertising its said product under said name, Coca Cola, and that said product under said

name is widely known to the consuming public, and a majority of the soda fountains in the United States dispense your orator's beverage, Coca Cola. Your orator shows that there is not, and never has been any other soda fountain beverage manufactured or sold throughout the United States known as Coca Cola, except that manufactured by your orator, and that when persons call for Coca Cola at any soda fountain in the United States, they refer to the drink or beverage manufactured by your orator.

Fourth: That your orator, in the manufacture of said syrup, has, at all times, colored said syrup by the use of caramel, which imparts to the syrup a distinctive and characteristic color, and is used solely for that end and purpose, and is a decorative addition to the syrup, and not structural; and that the drink is, in part, necessarily recognized and distinguished by said color, and that it is impossible for anyone desiring to purchase Coca Cola to ascertain, from a mere inspection, whether or not the article offered is genuine Coca Cola or an imitation, provided the general appearance of the product as to color and consistency is similar to Coca Cola.

Fifth: That your orator, by virtue of its adoption and continuous and exclusive use of said name, Coca Cola, in connection with its said product, has acquired and is now vested with the sole and exclusive right to said name; and that your orator's use of said name has been acquiesced in by the trade and public generally; and which exclusive right has been adjudged to your orator by the courts of the United States. That your orator has, in the course of its manufacture and

sale of said product, established a good will, of which said name is an integral part, and that said good will is of a value in excess of three thousand dollars, exclusive of interest and costs.

Sixth: That the defendants are, and have been for some time past, in possession of, and operate and have operated a soda fountain in their store, located corner Twelfth and Maple streets in the city of Los Angeles, state of California, under the name and style of Orr Drug Company, or Orr Pharmacy. That said defendants are fully advised of your orator's rights above described and of the large and subsisting public demand for the beverage, Coca Cola. That the defendants have, for some time past, instituted and maintained and are now maintaining at the said place of business conducted by them in said city of Los Angeles, as above set forth, an unfair competition with your orator, in this, that in response to orders for your orator's product, Coca Cola, the defendants have delivered and sold and are now delivering and selling, a spurious and inferior beverage, the color whereof is in simulation of your orator's beverage as and for the carbonated drink made from your orator's Coca Cola syrup.

That in furtherance of their scheme to defraud your orator and the public, the defendants have compelled their employees to use said spurious syrup to make the drinks served to customers ordering your orator's product; and that said substitutions were made, and are now made by defendants whenever Coca Cola is called for by a customer, in fraud of the purchasing public, and in violation of your orator's rights.

That the said infringing acts of the defendants have been committed by them without the license or consent of your orator, and that said acts of the defendants are now continuing, and threaten to injure, and have injured and are now injuring the good will of your orator, and the reputation of its beverage; and unless restrained by the injunctive power of this Honorable Court, will jeopardize or destroy the value of your orator's good will, the reputation of its beverage, and its rights in the premises.

Seventh: That by said acts, defendants have diverted to themselves profits to which your orator was lawfully entitled, and which your orator would otherwise have received, the amount whereof can only be ascertained by an accounting.

That your orator is without adequate remedy at law in the premises.

Wherefore, your orator prays:

(a) That a writ of *subpoena ad respondendum* be issued, in due form of law, requiring the defendants to appear and answer all and singular the matters and things hereinabove complained of, but not under oath, an answer under oath being hereby expressly waived.

(b) That the defendants, their agents, servants and employees, and each of them, may be enjoined:

1. From infringing upon the trade rights of your orator hereinabove described and from the further commission of the acts of substitution hereinabove complained of.

2. From selling and delivering, in response to requests or orders for Coca Cola, any beverage other

than that made from the Coca Cola syrup manufactured by your orator.

3. From using any name sufficiently similar to the name of Coca Cola, or any name, applied to any drink, as to cause deceit.

4. From marketing a product of the same identical or similar color so long used by your orator in its product.

5. From selling or exposing for sale any beverage other than your orator's product, Coca Cola, having the peculiar and distinctive color and appearance of your orator's product, or any such approximation thereof as may be likely to deceive the public without such differentiation as will effectually prevent the passing off of a spurious product as and for the product of your orator.

(c) That the defendants and all of their associates, salesmen, servants, clerks, agents, workmen, employees, attorneys and each and every person claiming under, by or through said defendants be enjoined and restrained as aforesaid during the pendency of this suit.

(d) That an accounting of the profits and damages in the premises be directed and taken under the direction of the court, and judgment thereon rendered; and that the defendant be adjudged to pay the costs herein.

(e) That your orator have such other and further relief in the premises as may be just and equitable.

And your Orator will ever pray.

THE COCA COLA COMPANY,

By Chas. H. Candler, Pt.

(Seal of Corporation.)

O'MELVENY, STEVENS & MILLIKIN,
CANDLER, THOMSON & HIRSCH,

Solicitors and of Counsel for Complainant.

Candler Building, Atlanta, Georgia.

*In the District Court of the United States for the
Southern District of California, Southern Division.*

THE COCA COLA CO.,

Complainant,

VERSUS

ROSE ORR, and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHARMACY,
Defendant.

In Equity. No.

Application for Injunction, &c.

State of Georgia, County of Fulton.

Personally appeared before the undersigned authority, Charles H. Candler, president of the complainant in the above cause, who, being first duly sworn as to the truth of the allegations made in the above bill, says that he has read the foregoing bill, and knows the contents thereof; and that the same is true of his own knowledge, except as to these matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

CHAS. H. CANDLER.

Sworn and subscribed before me this 27th day of
Oct., 1916.

(Seal)

W. A. LANDERS,

Notary Public Fulton County, Georgia.

[Endorsed]: No. C 63 Eq. In Equity. In the Dist.
Court of the U. S. for the Southern District of California, Southern Division. The Coca Cola Co., complainant vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co. or Orr Pharmacy, defendant. Bill of Complaint and Application for Injunction. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N.

Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

United States of America.

*District Court of the United States, Southern District
of California, Southern Division.*

In Equity.

Subpoena.

The President of the United States of America, Greeting: To Rose Orr and Frank L. Orr, Doing Business as Orr Drug Company, or Orr Pharmacy.

You are hereby commanded that you be and appear in said District Court of the United States aforesaid, at the court room in Los Angeles, California, on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a bill of complaint exhibited against you in said court by The Coca Cola Company, who is a citizen of the state of Georgia, and to do and receive what the said court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, the Honorable Benjamin F. Bledsoe, judge of the District Court of the United States, this 12th day of December, in the year of our Lord one thousand nine hundred and sixteen and of our Independence the one hundred and forty-first.

(Seal)

WM. M. VAN DYKE, Clerk.

By R. S. Zimmerman, Deputy Clerk.

Memorandum Pursuant to Rule 12, of Rules of Practice for the Courts of Equity of the United States, Promulgated by the Supreme Court, November 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the clerk's office; otherwise the bill may be taken *pro confesso*.

WM. M. VAN DYKE, Clerk.

By R. S. Zimmerman,
Deputy Clerk.

To the Marshal of the United States for the Southern District of California:

Pursuant to Rule 12, the within subpoena is returnable into the clerk's office twenty days from the issuing thereof.

Subpoena issued December 12th, 1916.

WM. M. VAN DYKE, Clerk.

By R. S. Zimmerman,
Deputy Clerk.

Received 10:40 a. m., Dec. 12, 1916. U. S. marshal's office, Los Angeles, Cal.

United States Marshal's Office, Southern District of California—ss.

I hereby certify, that I received the within writ on the 12th day of December, 1916, and personally served the same on the 12th day of December, 1916, on Rose Orr, and Frank L. Orr, by delivery to and leaving with Frank L. Orr, said defendant named therein.

personally, at the county of Los Angeles, in said district, a copy thereof.

Los Angeles, Dec. 12, 1916.

C. T. WALTON,

U. S. Marshal.

By Edmund L. Smith,

Deputy.

[Endorsed]: Marshal's Civil Docket No. 3210. No. C 63 Equity. U. S. District Court, Southern District of California, Southern Division. In Equity. The Coca Cola Company vs. Rose Orr and Frank L. Orr, etc. Subpoena. Filed Dec. 13, 1916. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Eq. R. B. 108.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

THE COCA COLA COMPANY,

Complainant,

vs.

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendants.

**Order to Show Cause Why Preliminary Injunction
Should Not Issue.**

Whereas, in the above entitled cause it has been made to appear from the bill of complaint filed herein that good reason exists why a temporary injunction should issue enjoining and restraining defendants, and each of them, from continuing the acts complained of in said

bill of complaint pending the final hearing and determination of this cause.

Now, therefore, it is hereby ordered that said defendants, and each of them, be and appear before this court in its court rooms in the Federal Building, located at the junction of Temple, Main and Spring streets in the city of Los Angeles, county of Los Angeles, state of California, on the 18th day of December, 1916, at the hour of 10 o'clock a. m., then and there to show cause, if any they have, why such temporary injunction should not issue.

BLED SOE,

Judge.

Dated Los Angeles, California, December 11th, 1916.

Received 4:50 p. m., Dec. 11, 1916. U. S. marshal's office, Los Angeles, Cal.

RETURN ON SERVICE OF WRIT.

United States of America, So. District of Calif.—ss.

I hereby certify and return that I served the annexed order to show cause on the therein named Rose Orr and Frank L. Orr, by handing to and leaving a true and correct copy thereof with Frank L. Orr personally at Los Angeles, in said district, on the 12th day of December, A. D. 1916.

C. T. WALTON,

U. S. Marshal.

By Edmund L. Smith,

Deputy.

[Endorsed]: (Copy) Marshal's Civil Docket No. 3210. No. C63 Equity. In the United States District Court, in and for the Southern District of California. Southern Division. The Coca Cola Company,

complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Company, or Orr Pharmacy, defendants. Order to Show Cause Why Preliminary Injunction Should Not Issue. Filed Dec. 13, 1916. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. Eq. R. B. 107. O'Melveny, Stevens & Millikin, suite 825 Title Insurance Bldg., N. E. corner Fifth & Spring Sts., Los Angeles, Cal., attorneys for complainant.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR, and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendants.

In Equity. No. C 63.

Answer.

The answer of Rose Orr and Frank L. Orr, doing business as the Orr Pharmacy, namely, Rose Orr, doing business under a fictitious name, answers the bill of complaint of the plaintiff, The Coca Cola Company, and for answer to said bill denies and alleges as follows:

These defendants, saving and reserving to themselves all right of exceptions to the said bill of complaint, on account of the many errors therein contained, for answer thereto, or for so much and such parts thereof as they are advised by counsel it is necessary

or important for them to answer, make answer thereunto and answering say:

These defendants say that for several years last past and since on or about the 3rd day of May, 1915, the said defendant Rose Orr has done business under a fictitious name, namely, under the name of "Orr Pharmacy" and that said business has been conducted at number 1200 Maple avenue in the city of Los Angeles, California, namely at the corner of Maple avenue and Twelfth street in said city, and is now conducting the said business; that the defendant Frank L. Orr has been general manager of said business and in control thereof for the said Rose Orr during all of said time, and is now in control of said business as such manager and agent and not otherwise.

These defendants say that they have no knowledge or information other than from the said bill of complaint as to the alleged incorporation of the said The Coca Cola Company under the laws of the state of Georgia, or any other state, or as to whether or not said corporation has its principal place of business in the city of Atlanta, Georgia, or elsewhere, in the state of Georgia, or as to whether or not said complainant is a citizen of the state of Georgia; wherefore these defendants cannot admit or deny the allegations of said bill relative to said matters and insist that complainant make proof thereof.

These defendants say that they have no knowledge other than the allegations of said bill of complaint as to whether, since the year 1892, or any other date, the said complainant has continuously engaged in the manufacture and sale of a certain beverage known as

Coca Cola, or any other beverage, which said beverage is alleged to be of a distinctive color and flavor and for which said product, under said name, or any name, the said complainant has established a large and valuable trade in the city of Los Angeles, California, and elsewhere antecedent to the times mentioned in said bill of complaint, or at any other time; and that these defendants cannot admit or deny the said allegations of said bill relative thereto, and therefore these defendants insist that complainant make proof thereof.

That these defendants have no knowledge or information other than from said bill of complaint that said beverage is made by the said complainant in the form of a syrup, which, when mixed with carbonated water in certain proportions, forms a soft drink or beverage sold and dispensed at soda fountains or in bottles to customers over almost all of the United States and several foreign countries and that very large quantities of said syrup are constantly manufactured by complainant to supply the large demand therefor; and these defendants therefore cannot admit or deny the allegations of said bill relative thereto and they therefore insist that complainant make proof thereof.

That these defendants have no knowledge or information other than from said bill of complaint as to the fact that the said complainant has expended vast sums of money in advertising its said product under the name of Coca Cola and that the said product under said name is widely known to the consuming public and that a majority of soda fountains in the United States dispense complainant's beverage, Coca Cola; and these defendants say that they have no knowledge or in-

formation other than from said bill of complaint as to the fact that there is not and never has been any other soda fountain beverage sold throughout the United States known as Coca Cola other than that manufactured by the complainant, and these defendants say that they have no knowledge or information other than from said bill of complaint that when persons call for Coca Cola at any soda fountain in the United States, that they, the said customer, refer to the drink or beverage manufactured by the said complainant.

These defendants admit, upon information and belief, that the said syrup of Coca Cola is colored by the use of caramel or burnt sugar; but these defendants allege that they have no information, except from said bill of complaint, that the said caramel or burnt sugar imparts to the said syrup a distinctive and characteristic color; and these defendants say that they have no information other than from the said bill of complaint that the said caramel or burnt sugar is used solely to color the said beverage and is a decorative addition to said syrup and not structural; and these defendants allege that they have no information other than from said bill of complaint that the said drink, to-wit, Coca Cola, is in part necessarily recognized and distinguished by said color and that it is impossible for consumers, desiring to purchase Coca Cola, to ascertain from mere inspection whether or not the article offered is genuine Coca Cola or an imitation, provided the general appearance of the product as to color and consistency is similar to Coca Cola, and therefore these defendants cannot admit or deny the allegations of said bill relative

to said matters and they insist that complainant make proof thereof.

These defendants say that they have no knowledge or information other than from said bill of complaint as to the allegations that the said complainant, by virtue of its adoption and continuous and exclusive use of the name, Coca Cola, in connection with said product, has acquired and is now vested with the sole and exclusive right to said name, and therefore these defendants cannot admit or deny the allegations of said bill relative thereto and they insist that complainant make proof thereof: and these defendants say that they have no knowledge or information, other than from said bill of complaint, as to the allegations that the complainant's use of the said name, to-wit, Coca Cola, has been acquiesced in by the trade and public generally, and these defendants therefore cannot admit or deny the said allegations of said bill relative thereto and they insist that complainant make proof thereof.

These defendants further say that they have no information, other than from the said bill of complaint, as to the alleged fact that the said complainant has been adjudged the exclusive right to the use of the said name, Coca Cola, by the courts of the United States, or by any other court, and they cannot, therefore, admit or deny the said allegations of said bill and insist that complainant make proof thereof.

These defendants allege that they have no information, other than from the said bill of complaint, that the said complainant in the course of its manufacture and sale of its said product, to-wit, Coca Cola, has established a good-will therein, of which said name is

an integral part, and that said good-will is of a value in excess of three thousand dollars, exclusive of interest and costs, and these defendants, therefore, say that they cannot admit or deny the allegations of said bill relative thereto and insist that complainant make proof thereof.

Further answering the said bill of complaint of complainant, and particularly the sixth paragraph thereof, these defendants say that since May, 1915, the said defendant Rose Orr has conducted a drug business and drug store at the corner of Twelfth street and Maple avenue in the city of Los Angeles, California, under the name of the "Orr Pharmacy," and that the said Frank L. Orr has been the general manager of said business and in control thereof as agent for the said Rose Orr.

Further answering the said sixth paragraph of said bill of complaint, these defendants say that they are not fully advised of the complainant's rights in and to the said beverage known as and called Coca Cola, nor that the said complainant has a trade-mark therein by user or otherwise. These defendants expressly deny that they have, at any time, maintained at said place of business, or at any other place in the city of Los Angeles, an unfair competition with the complainant in the sale of the said beverage, Coca Cola, or otherwise; and these defendants expressly deny that they ever, by themselves or their agents, in response to orders for complainant's product, Coca Cola, delivered and sold any beverage, either spurious and inferior, or otherwise, in the place and stead of Coca Cola; and these defendants expressly deny that they, at their

said place of business, are now delivering or ever have delivered to any purchaser as and for Coca Cola any other beverage whatever than the Coca Cola of the complainant, either spurious and inferior, or otherwise, and these defendants expressly deny that they have ever, at any time, either by themselves or through any agent or clerk, sold and delivered to any person any other beverage of any kind whatsoever and for Coca Cola at their said place of business at Twelfth street and Maple avenue in the said city of Los Angeles, or at any other place and that all allegations in said bill of complaint to the contrary are false.

These defendants further answering the said bill of complaint of the complainant and particularly the sixth paragraph thereof, deny that they ever, in any way or manner, sought to defraud the public, or the complainant, in the sale of any product as and for Coca Cola which was not in truth and in fact Coca Cola, the syrup of which was manufactured by the complainant; and these defendants expressly deny that they ever compelled their employees, or any of their employees, or requested or desired any agent or employee of theirs, to use spurious syrup to make drinks served to customers ordering complainant's product, Coca Cola; and these defendants expressly deny that any such deception was ever practiced by them, in any way or manner, or by their order, or by any clerk or employee of theirs at their said place of business, or at any other place.

These defendants further answering complainant's said bill of complaint, and particularly as to the sixth paragraph thereof, deny that they now, or at any time,

have substituted any other product, whether inferior or otherwise, for Coca Cola, in fraud of the purchasing public, or in violation of the complainant's rights, or otherwise, but that they, their agents and clerks, have at all times been requested to furnish to the consuming public true Coca Cola, the syrup of which was manufactured, as these defendants are informed and verily believe, by the said complainant and no one else.

These defendants further answering the said bill of complaint expressly deny that they are now threatening to continue to sell some other product, whether inferior or otherwise, in the place and stead of Coca Cola, or that they ever intend so to do, or ever have so done at their said place of business in the city of Los Angeles, or at any other place, and that all allegations in said bill of complaint to the contrary are false.

These defendants further answering the said bill of complaint, and particularly the seventh paragraph thereof, deny that these defendants have diverted to themselves profits to which the complainant was lawfully entitled and which the complainant would otherwise have received, in any way or manner, either by the sale of any different product or drink as Coca Cola, or otherwise, at their said place of business in the city of Los Angeles, or at any other place, and deny that they ever thought or intended so to do, or gave any orders to any clerk or employee so to do; and these defendants deny that they have in any way or manner injured or damaged the said complainant as alleged in the said bill of complaint, or otherwise, by the sale of some other or different drink or product as Coca

Cola manufactured by complainant, whether inferior or spurious, or otherwise, and that all allegations to the contrary contained in the said bill of complaint, are wholly false and without any foundation whatever in fact.

Wherefore these defendants ask that the said complainant take nothing herein, and these defendants ask and humbly pray that they be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ROSE ORR,

doing business as Orr Pharmacy and

FRANK L. ORR,

SIDNEY J. PARSONS,

Solicitor and Counsel for Defendants.

United States of America, Ninth Judicial District of California,—ss.

Rose Orr and Frank L. Orr, being first duly sworn each for themselves, say: That they have each read the foregoing answer to plaintiff's bill of complaint and know the contents thereof and that the same is true of their own knowledge; except as to the matters therein stated upon information and belief, or denied for want of information sufficient to form a belief and as to those matters they believe it to be true.

ROSE ORR.

FRANK L. ORR.

Subscribed and sworn to before me this 27th day of December, 1916.

(Seal)

SIDNEY J. PARSONS,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. No. C 63. In the District Court of the United States, Southern District of California, Southern Division. The Coca Cola Company, complainant versus Rose Orr & Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy. In Equity. Answer. Filed Jan. 2, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. S. J. Parsons, atty, for defendants.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA CO.,

Complainant,

vs.

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,
Defendants.

In Equity. No.

Application for Injunction.

Affidavit of S. C. Dobbs.

State of Georgia, County of Fulton.

Before me, a notary public in and for said state and county, personally came S. C. Dobbs, who being first duly sworn in the above stated case, on oath, deposes and says:

That he is a resident of the city of Atlanta, state of Georgia, and is and has been for twenty years connected with The Coca-Cola Company, complainant in the above stated case, and in such capacity has been

familiar with the details of the management and manufacture, and particularly with the advertisements, of complainant.

That deponent for about 10 years had been advertising manager of The Coca-Cola Company, complainant in this case, and in such capacity is familiar with the nature and extent of the advertising which has been done by said company during said time. That even before deponent became advertising manager he was familiar, in a general way, with the advertising done by said company. That in all advertising, which consisted of space in newspapers and magazines, and in specialty advertising, The Coca-Cola Company has used the word "Coca-Cola" as a trade name for its product, and that complainant has so used said name since deponent became advertising manager of complainant.

That all of complainant's advertisements have taken the form of newspaper advertisements, published and circulated in the United States and foreign countries; and advertisements in magazines and periodicals circulating in the United States and foreign countries; and on billboards, signboards, street and railway cars, and in specialties. That said complainant has expended vast sums in advertising the product Coca-Cola under said trademark, and trade name, Coca-Cola, since deponent took charge of said advertising. That during the year 1905 complainant expended the sum of \$280,985.12 in such advertising; and that an increasingly larger amount has been expended in such advertising for every year since, up to the present time.

Deponent says that said trademark, Coca Cola, has

been used continuously by complainant on its labels and in the advertising of complainant from the time deponent first became acquainted with and employed by said company.

Deponent states that said product has always had the same color and general appearance that it now has, and that the color and general appearance has become familiar to the general public, and that said color, insofar as soft drinks are concerned, is distinctive of the article manufactured by complainant.

Deponent says that he has read the bill of complaint filed by complainant in above stated case, and is familiar with the fact referred to and alleged as pertaining to complainant's product, and that he has examined the bill of complaint in regard to acts of defendant, and that the allegations of said bill of complaint as pertaining to the product of complainant, the color of complainant's product, and the use of said product and the enormous amount of advertising, are true.

Deponent makes this affidavit for use in above stated case.

And further deponent saith not.

S. C. DOBBS.

Sworn to and subscribed before me this 27th day of Oct., 1916.

(Seal)

W. A. LANDERS,

Notary Public, Fulton County, Ga.

[Endorsed]: No. C 63 Eq. In Equity. In the U. S. District Court for the Southern Dist. of California, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing busi-

ness as Orr Drug Co., defendants. Affidavit of S. C. Dobbs. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA CO.,

Complainant,

vs.

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,
Defendants.

In Equity. No.

Application for Injunction.

Affidavit of Charles H. Candler.

State of Georgia, County of Fulton.

Before me, a notary public in and for said state and county, personally came Charles H. Candler, who, being first duly sworn in the above stated case, on oath deposes and says:

That he is president of The Coca-Cola Company, the complainant in the above stated case, and that he has been president, vice-president or general manager of The Coca-Cola Company for eight years. That deponent's official duties in connection with said company are and have been for said period, the manufacturing of the syrup known and sold as Coca-Cola, and that holding said position, and carrying on its duties, deponent is familiar and well acquainted with the manufacturing of said Coca-Cola.

That deponent has been connected with The Coca-Cola Company for sixteen years, and has been employed by The Coca-Cola Company in many capacities, but that at all times, he has been familiar with said drink or beverage, Coca-Cola. Deponent states that said beverage, Coca-Cola, has been manufactured and sold by The Coca-Cola Company, complainant in this case, for a period of more than twenty years, and that said company has continuously and uninterruptedly since its organization, engaged in the manufacture and sale of said product, Coca-Cola. Deponent states that the Coca-Cola manufactured by complainant is, and has always been, since the organization of complainant, colored by a substance known as caramel, which is used by complainant in the manufacture of said product for the sole and exclusive purpose of giving to said product the particular and distinctive color which it has, and has always had, and by which deponent says it has become known to consumers of said beverage throughout practically all of the states of the United States, and in many foreign countries.

That if said coloring were left out of the product manufactured by complainant, and the product should be left in its natural state or color, resulting from the combination of all the ingredients of said product except caramel, that said product would be a light golden color, but that by using said caramel, said product is given a distinctive color of a reddish-brown nature, and that said caramel has no other effect whatsoever on said syrup, and makes no change in the taste, flavor or quality thereof, and is put into

said product for the sole and exclusive purpose of giving it a distinctive color.

Deponent says that for more than twenty years, continuously and uninterruptedly, complainant has been manufacturing said product, Coca-Cola, and has been engaged in the sale of said product, selling same throughout the United States, and has been continuously and uninterruptedly using on said product in commerce between the several states of the United States, the name or mark Coca-Cola, and that said Coca-Cola has been used exclusively by complainant for its product and has never been used as designating or applicable to the product of any other manufacturer.

That in a few instances, other manufacturers than complainant have attempted to get out a beverage similar to the product of complainant, and to use as the name of same, the name "Coca-Cola" either alone or in combination with other word or words, but that in all such instances, complainant has promptly, upon having its attention called to the attempted use of said name by others, brought about a cessation of said use by calling the attention of such parties to the rights of complainant, and having them thereby desist from the use of said name, or by instituting suits against such parties and procuring from the various courts of the district in which said word was used injunctions preventing the further use of the name "Coca-Cola," either alone or in combination with other words, or any product other than the product of complainant; and deponent says that the said name Coca-Cola has become known to the public generally, throughout the entire United States, as the name and

designation of the particular product of complainant, and means, and has come to mean exclusively, as deponent is informed and believes, complainant's product.

Deponent states that he has read the bill of complaint filed by complainant in this case, and is familiar with the facts referred to and alleged as pertaining to complainant's product, and that deponent has examined the bill of complaint in regard to the acts of defendant, and that the allegations of said bill as pertaining to the product of complainant, the color of complainant's product, and the enormous amount of advertising, are true.

Deponent makes this affidavit for use in above stated case.

And further, deponent saith not.

CHAS. H. CANDLER.

Sworn to and subscribed before me this 27th day of Oct., 1916.

(Seal)

W. A. LANDERS,

Notary Public, Fulton County, Ga.

[Endorsed]: No. C 63 Eq. In Equity. In the U. S. Dist. Court for the Southern Dist. of California, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co. or Orr Pharmacy, defendants. Affidavit of Chas. H. Candler. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendant.

In Equity. No.

Application for Injunction, &c.

Affidavit of H. B. Pierce.

State of Georgia, County of Fulton.

Before me, a notary public in and for said state and county, personally came H. B. Pierce, who, being duly sworn in above-stated case, on oath deposes and says:

That he is over twenty-one years of age, and resides in the city of Atlanta, state of Georgia.

That deponent is, and has been for sometime past in the employment of The Coca Cola Company, complainant herein, deponent having had considerable experience in the investigation of sales of substitute products as and for complainant's product, Coca-Cola, by retail dealers; and that for sometime past deponent has had charge of the investigation department of said complainant in connection with the work of investigation as to sales of such substitute products. As a result of such experience, deponent has become thoroughly familiar with the product, Coca-Cola, and with the taste, color and general appearance thereof, and with the manner in which same is sold, both at the soda fountain and in bottled form.

That deponent, at the suggestion of complainant herein, during the month of August, 1915, visited the city of Los Angeles, California, where deponent made an investigation as to the sale by defendants herein of a product as and for Coca-Cola, at their soda fountain in said city of Los Angeles, located corner Twelfth and Maple avenues. This deponent was accompanied on said visits by a witness as hereinafter set out; and drinks and samples of the product being served as and for Coca-Cola were purchased at said fountain, as hereinafter set out; no explanation being made on any of such occasions as to the product so furnished; such drinks or samples being on each occasion drawn from the fourth container to left of carbonated water spigot labeled "Coke"; all of such drinks or samples being of the same general appearance and color as Coca-Cola syrup:

August 26-1915, 8:00 p. m. Purchaser, H. B. Pierce; witness, O. N. Normandin. Drink served as and for Coca-Cola.

August 27-1915, 1:20 p. m. Purchaser, H. B. Pierce; witness, O. N. Normandin. Drink served as and for Coca-Cola.

August 26-1915, 8:00 p. m. Purchaser, H. B. Pierce; witness, O. N. Normandin. Sample of syrup sold as and for Coca-Cola.

August 27-1915, 1:20 p. m. Purchaser, H. B. Pierce; witness, O. N. Normandin. Sample of syrup sold as and for Coca-Cola.

That this deponent requested H. N. Lloyd and C. N. Robbins of Los Angeles to call at said store of defendant on August 26th and 27th, 1915, for the purpose

of making test purchases; and that in accordance with such instructions, said Lloyd and Robbins did call at said store on several occasions on said dates, where purchases were made of the product being so sold as and for Coca-Cola.

That deponent, immediately following the purchase of the samples above named on August 26th and 27th, 1915, carried such samples to the room of deponent, where, in the presence of said Normandin, same were, on each occasion, sealed and labeled, deponent and said Normandin each attaching our signatures to the labels affixed to said bottles. Deponent attached to said bottles the numbers "2057" and "2058" for identification by deponent.

That while said bottles were each sealed and labeled, and said samples in the same condition as when so purchased, deponent packed said three samples and shipped same from Los Angeles, California, on August 27th, 1915, to Dr. H. C. Fuller, Washington, D. C., for the purpose of having an analytical examination made of such samples, said shipment being made by Adams Express.

That said Dr. H. C. Fuller reported to deponent on October 1st, 1915, that neither of said samples so analyzed was Coca-Cola, the product of complainant herein.

Deponent has examined the exhibits attached to the affidavit of Dr. H. C. Fuller in this case as Exhibits "A" and "B," and that said samples are the same hereinabove referred to, purchased by this deponent at the store of defendants herein; and such exhibits now contain the same labels placed thereon by deponent,

and a portion of the syrup, of same color and appearance as that so purchased, deponent identifying such exhibits by the labels thereon, and by the numbers placed thereon by deponent.

Deponent makes this affidavit for use in the above stated case.

And further, deponent saith not.

H. B. PIERCE.

Sworn to and subscribed before me this 2nd day of November, 1916.

(Seal)

LILIAN STANSBURY,
Notary Public, Fulton County, Ga.

[Endorsed]: No. C 63 Eq. In Equity. In the Dist. Court of the U. S., for the Southern District of California, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co. or Orr Pharmacy, defendants. Affidavit of H. B. Pierce. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendants.

In Equity. No.

Application for Injunction, &c.

Affidavit of O. N. Normandin.

State of California, County of Los Angeles.

Before me, a notary public in and for said state and county, personally came O. N. Normandin, who, being first duly sworn in above stated case, on oath deposes and says:

That he is over twenty-one years of age, and resides in the city of Los Angeles, California.

That deponent is, and has been, for sometime past thoroughly familiar with the product Coca-Cola manufactured by complainant herein, deponent's familiarity with such product having been gained through consumption thereof.

That during the latter part of August, 1915, H. B. Pierce of Atlanta, Ga., was in the city of Los Angeles, and that at the request of said Pierce this deponent assisted said Pierce in making several purchases at the store of defendants herein, located corner Twelfth and Maple streets, in said city of Los Angeles. That deponent has read the affidavit of said Pierce in this case as to such visits so made; and that same is true and correct as to all of such purchases therein stated to have been made; and that the product sold on each of such occasions was sold as and for Coca-Cola, and without explanation.

That samples of said product were also purchased by said Pierce in the presence of deponent on August 26th and 27th, 1915, respectively, as set forth in the affidavit of said Pierce; and that each of such samples was sold as and for Coca-Cola, and in response to call for Coca-Cola syrup, and without explanation.

That such samples were sealed and labeled by said Pierce in the presence of deponent, as stated in the affidavit of said Pierce, while in the same condition as when purchased.

Deponent has examined the exhibits attached to the affidavit of H. C. Fuller in this case as Exhibits "A" and "B," respectively, and that said exhibits are the samples so purchased by said Pierce in the presence of deponent at defendant's place of business; deponent identifying said samples by the labels thereon. That said exhibits now contain a portion of syrup of the same color and appearance as that so purchased.

Deponent says that during the month of March, 1916, this deponent was requested by Geo. H. Reed of The Coca-Cola Co., Los Angeles, California, to make an investigation at the place of business of defendants herein, as to the product being sold as and for Coca-Cola; and that in conjunction with C. N. Robbins of Los Angeles this deponent on several occasions visited said store of defendants, where drinks and samples of the product being sold as and for Coca-Cola were purchased, as hereinafter set out; no explanation being made on any occasion as to the product so furnished; such drinks and samples being on each occasion drawn from the fourth container to left of carbonated water spigot labeled "Coke"; all of such drinks or samples being of the same general appearance and color as Coca-Cola syrup:

DRINKS PURCHASED AS AND FOR COCA-COLA

March 10-1916, 11:10 a. m. Purchaser, C. N. Robbins; witness, O. N. Normandin.

March 10-1916, 1:00 p. m. Purchaser, O. N. Normandin; witness, C. N. Robbins.

March 10-1916, 5:10 p. m. Purchaser, O. N. Normandin; witness, C. N. Robbins.

March 11-1916, 9:40 a. m. Purchaser, O. N. Normandin; witness C. N. Robbins.

March 11-1916, 12:10 p. m. Purchaser, O. N. Normandin; witness C. N. Robbins.

March 11-1916, 2:50 p. m. Purchaser, O. N. Normandin; witness C. N. Robbins.

March 14-1916, 10:10 a. m. Purchaser, C. N. Robbins; witness, O. N. Normandin.

March 15-1916, 1:40 p. m. Purchaser, C. N. Robbins; witness, O. N. Normandin.

That on three of the above named occasions, as hereinafter set forth, samples were purchased of the product being served and sold as and for Coca-Cola, this deponent on the occasions named handing to the dispenser an empty Thermos bottle, requesting that he sell deponent some Coca-Cola syrup; the product furnished in response to each of such requests being drawn from the same container as drinks just previously served as and for Coca-Cola had been drawn, and without explanation:

SAMPLES PURCHASED AS AND FOR COCA-COLA SYRUP

March 11-1916, 2:50 p. m. Purchaser, O. N. Normandin; witness, C. N. Robbins.

March 14-1916, 10:10 a. m. Purchaser, O. N. Normandin; witness, C. N. Robbins.

March 15-1916, 1:40 p. m. Purchaser, O. N. Normandin; witness, C. N. Robbins.

That immediately following the purchase of each

of the above named samples, this deponent after paying the dispenser for same, accompanied by said Robbins, carried said samples to the office of George N. Reed of the Coca-Cola Company, Los Angeles, California, where said Reed, in the presence of deponent and said Robbins, poured about four ounces of such sample, on each occasion, into a clean bottle, and while said syrup was in the same condition as when purchased, sealed and labeled said bottle; deponent and said Robbins each attaching our signatures to the labels affixed to each of such bottles. Deponent and said Robbins also affixed our signatures to duplicates of each of such labels, and deponent hereto attaches such duplicate labels and makes same a part hereof as Exhibits "A," "B" and "C," respectively.

That deponent and said Robbins then left said samples so sealed and labeled, with said George H. Reed.

Deponent has examined the exhibits attached to the affidavit of H. C. Fuller in this case as Exhibits "C," "D" and "E," respectively, and that said exhibits are the samples so purchased by deponent, and sealed and labeled, as above described, and now contain syrup of the same appearance and color as that so purchased; and that each of said bottles now has thereon the same label so prepared and signed by this deponent and said Robbins, deponent identifying said exhibits by such labels.

Deponent makes this affidavit for use in above stated case. And further, deponent saith not.

O. N. NORMANDIN.

Sworn to and subscribed before me, this 25th day of November, 1916.

(Seal)

ELIZA P. HOUGHTON,

Notary Public in and for the County of Los Angeles,
State of California.

EXHIBIT "A."

Closet No..... Operation.....

Instructions: For each purchase made answer all the questions fully, then paste same to bottle, or other receptacle, containing sample.

Sample No. 1.

Date—March 11th, 1916.

From whom purchased—Orr Pharmacy.

Street address—12th and Maple Ave., city of Los Angeles, state of California.

Hour purchased—2:50 p. m. Amount paid—25c.
What asked for—Coca Cola syrup.

Number of spigot or container in fountain syrup drawn from—4th container to left of carbonated water spigot labeled Coke.

Quantity purchased—8 ozs.

If not drawn from fountain from where drawn—
Describe same and location—

Was syrup for drinks served, drawn from same receptacle as sample?—Yes.

If not from where drawn, describe same and location—

If bottled goods, name of beverage received—

Number of bottles purchased—

Name of seller—Brent Martin. Age—25 yrs.

Height—5 ft. 10 ins. Weight—155 lbs. Build—medium. Color of hair—Black.

Color of eyes—Dark. Complexion—Sallow.

Beard, mustache or smooth face—Smooth. Color of same—

Peculiarities—None.

Seller wore at time of sale—Grey trousers, negligee shirt, striped.

Remarks: F. L. Orr was present and witnessed the purchase. On Maple Ave. show window is the following: "Grace Orr, Prop."

Purchaser—O. N. Normandin, city Los Angeles, state of California.

Witness to purchase C. N. Robbins, city of Los Angeles, state California.

Note: Purchaser and witness to purchase will sign name in full, city they live in, and state, and place some mark after signature for future identification.

Forwarded to F. C. Peace, 1430 Candler Bldg., Atlanta, Ga., via Wells Fargo Express, 1916.

Exhibit "A" to affidavit O. N. Normandin.

EXHIBIT "B."

Closet No..... Operation.....

Instructions: For each purchase made answer all the questions fully, then paste same to bottle, or other receptacle, containing sample.

Sample No. 2. Dated March 14th, 1916.

From whom purchased—Orr Pharmacy.

Street address 12th street and Maple Ave., city of Los Angeles, state Cal.

Hour purchased 10:10 a. m. Amount paid 25c. What was asked for Coca Cola syrup.

Number of spigot or container in fountain syrup

drawn from 4th to left of carbonated water spigot.
Quantity purchased 8 ozs.

If not drawn from fountain from where drawn—

Describe same and location—

Was syrup for drinks served, drawn from same receptacle as sample?—Yes.

If not from where drawn, describe same and location—

If bottled goods, name of beverage received—

Number of bottles purchased—

Name of seller—Brent Martin. Age—25 yrs.

Height—5 ft. 10 ins. Weight 155 lbs. Build medium. Color of hair black.

Color of eyes dark. Complexion sallow.

Beard, mustache or smooth face—smooth. Color of same—

Peculiarities: None.

Seller wore at time of sale: Gray trousers—negligee shirt.

Remarks: No one else present.

Purchaser—O. N. Normandin, city of Los Angeles, state Cal.

Witness to purchase C. N. Robbins, city Los Angeles, state Cal.

Note: Purchaser and witness to purchase will sign name in full, city they live in, and state, and place some mark after signature for future identifications.

(Ex. "B" to affidavit O. N. Normandin.)

EXHIBIT "C."

Closet No. Operation

Instructions: For each purchase made answer all

the questions fully, then paste same to bottle, or other receptacle, containing sample.

Sample No. 3. Dated March 15th, 1916.

From whom purchased—Orr Pharmacy.

Street address 12th St. and Maple Ave., city Los Angeles, state Cal.

Hour purchased 1:40 p. m. Amount paid 25c. What was asked for—Coca Cola syrup.

Number of spigot or container in fountain syrup drawn from 4th to left of carbonated water spigot. Quantity purchased 8 ozs.

If not drawn from fountain from where drawn—

Describe same and location—

Was syrup for drinks served, drawn from same receptacle as sample? Yes.

If not from where drawn, describe same and location—

If bottled goods, name of beverage received—

Number of bottles purchased—

Name of seller—Brent Martin. Age—25 yrs.

Height—5 ft. 10 ins. Weight 155 lbs. Build medium. Color of hair black.

Color of eyes—dark. Complexion—sallow.

Beard, mustache or smooth face—smooth. Color of same—

Peculiarities: None.

Seller wore at time of sale: Gray trousers—negligee shirt.

Remarks: F. L. Orr was present at the time purchase was made.

Purchaser—O. N. Normandin, city Los Angeles, state Cal.

Witness to purchase—C. N. Robbins, city Los Angeles, state Cal.

Note: Purchaser and witness to purchase will sign name in full, city they live in, and state, and place some mark after signature for future identifications.

(Exhibit "C" to affidavit O. N. Normandin.)

[Endorsed]: No. C 63 Eq. In equity. In the Dist. Court of the U. S., for the Southern District of California, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co. or Orr Pharmacy, defendants. Affidavit of O. N. Normandin. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

In the District Court of the United States for the Southern District of California, Southern Division.

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG COMPANY, or ORR PHARMACY,

Defendants.

In Equity. No.

Application for Injunction, &c.

Affidavit of H. C. Fuller.

United States of America, District of Columbia.

Before me, a notary public in and for said District of Columbia, personally appeared H. C. Fuller, who,

being first duly sworn in above-stated case, on oath deposes and says :

That he is a resident of the city of Washington, District of Columbia, and that he is over twenty-one years of age. Deponent states that he received his education at the Worcester Polytechnic Institution, Worcester, Massachusetts. That deponent has had about fourteen years' experience as a chemist since leaving that institution; that for four years, deponent was connected with the Bureau of Agriculture at Washington, D. C. That prior to that time, deponent was connected with the Mallinckradt Chemical Works, of New York City, and also, engaged in experimental work with Parke, Davis & Company, of Detroit, Michigan, and Boston, Massachusetts, and New York.

Besides the above, deponent states that he has for many years, being doing analytical work in soft drinks, and kindred matters, and has had many years of experience in that work, and that said experience has given him intimate knowledge of analytical methods of examination of food products.

That for many years past, deponent has been familiar with the product known and sold as Coca-Cola, and that during the past four years, deponent has made many analytical examinations of said product Coca-Cola, and is familiar with the constituents which go to compose said product. Deponent states that his analytical examination of Coca-Cola shows that said product is colored with caramel. That caramel is a coloring matter which is produced by the heating of sugar to a certain temperature.

Deponent states that from his experience in analyti-

cal work, and with food and drug products, that said caramel in Coca-Cola is a purely decorative feature of Coca-Cola, and has no effect of any nature whatsoever on the consumer, except that it tends to give the product in which it is contained a very pleasing appearance and that it is not at all a necessary or structural feature of said product. Deponent states that there are many other colorings that could be used to make a successful commercial product and which would be no more expensive than caramel.

Deponent states that he has known of the product Coca-Cola for many years, and that one of the means of distinguishing Coca-Cola is by the color of said product, and that from long use of said coloring in said product Coca-Cola, it has become associated with said product, and is a means of identifying said product Coca-Cola.

That on or about September 3rd, 1915, this deponent received by express, from Los Angeles, California, two samples of syrup, of the same general appearance and color of the product of complainant herein. That said samples were securely sealed and labeled when so received, the labels on said samples showing that same had been purchased at the store of defendants herein, corner Twelfth and Maple avenues, Los Angeles, California, by H. B. Pierce, in the presence of O. N. Normandin, on August 26th and 27th, 1915, respectively.

That said samples were marked by this deponent for identification, "46a" and "47a," in the order of purchase above named.

That on or about March 31st, 1916, this deponent received from Atlanta, Georgia, three samples of syrup

of the same general appearance and color of the product of complainant herein. That said samples were securely sealed and labeled when so received, the labels on said samples showing that same had been purchased at the place of business of defendant herein, by O. N. Normandin, in the presence of C. N. Robbins, on March 11th, 14th and 15th, 1916, respectively, as and for Coca-Cola. Said bottles also had thereon the numbers "2430," "2431" and "2432" when so received by deponent.

Deponent states that immediately upon receipt of said two lots of samples, and while said samples were in the same condition as when received by deponent, no change having been made in said syrup from the time deponent received same by express as above described, deponent broke the seals on each of said bottles, and a part of the syrup was taken from each of such bottles for the purpose of making an analytical examination thereof, in order to determine whether or not the syrup contained therein was Coca-Cola, the product of the complainant in above-stated case.

Deponent states that said analytical examination of said samples as above set out shows that said product in all of said bottles was colored with artificial coloring, caramel, and that without said coloring, said samples would not be of the color which deponent found, and that said caramel is merely a decorative, and not a structural feature of said product, and not in any way necessary for a commercially successful product.

Deponent made a further analytical examination of said samples for the purpose of ascertaining if same was the product of the complainant, and deponent states

that none of said samples was the product manufactured and sold by complainant in above case as Coca-Cola. That there were many differences in said product from the product of the complainant. That as a result of said analytical examination of said samples, deponent shows that the following differences were shown between said samples and genuine Coca-Cola syrup, towit:

	Specific Gravity	Phosphoric Acid	Caffeine
Coca-Cola Syrup:	1.259	.21%	.19%
(#46a) Ex. "A,"	1.2629	.31%	.12%
(#47a) Ex. "B,"	1.2625	.31%	.13%
(#2430) Ex. "C,"	1.280	.23%	.08%
(#2431) Ex. "D,"	1.280	.23%	.08%
(#2432) Ex. "E,"	1.280	.23%	.08%

showing a difference between all of said samples and genuine Coca-Cola in the specific gravity, the phosphoric acid and the caffeine content; and that in addition, the flavor and odor of each of said samples was distinct from the flavor and odor of genuine Coca-Cola syrup.

Deponent hereto attaches said bottles so received by deponent, each containing a portion of the syrup contained therein when so received, and each bearing the same label thereon when so received, and makes same a part hereof, as Exhibits A, B, C, D and E, respectively.

From the result of said analysis, this deponent states that said samples so examined by him are not Coca-Cola syrup made by complainant in the above-stated case.

Deponent makes this affidavit for use in above-stated case. And further, deponent saith not.

HARRY C. FULLER.

Sworn to and subscribed before me, this 31st day of October, 1916.

(Seal) REGINALD RUTHERFORD,
Notary Public, City of Washington, District of Columbia.

[Endorsed]: No. C 63 Eq. In equity. In the Dist. Court of the United States for the Southern District of California, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co., defendants. Affidavit of H. C. Fuller. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG CO., or ORR PHARMACY,
Defendants.

In Equity. No.

Application for Injunction, &c.

Affidavit of H. M. Lloyd.

State of California, County of Los Angeles.

Before me, a notary public in and for said state and county, personally came H. M. Lloyd, who, being first duly sworn in above-stated case, on oath deposes and says that he is over twenty-one years of age, and resides in the city of Los Angeles, state of California.

That deponent is, and has been for some time past, familiar with the product Coca-Cola manufactured by complainant herein, deponent's familiarity with such product having been gained through consumption thereof.

That during the latter part of August, 1915, H. B. Pierce of Atlanta, Georgia, was in the city of Los Angeles; and that at the request of said Pierce, this deponent in conjunction with C. N. Robbins, of Los Angeles, made several purchases at the store of defendants herein, located corner Twelfth and Maple streets, in said city of Los Angeles; the visits so made by deponent and said Robbins being as follows and on occasions as named, requests were made to be served with the product Coca-Cola:

Aug. 26-1915, 11:15 a. m. Purchaser, H. M. Lloyd. Witness, C. N. Robbins. Drink served as and for Coca-Cola, drawn from 4th spigot to left of carbonated water spigot, labeled "Coke."

That after drinking above product, this deponent entered into conversation with Mr. Orr, who was near the fountain; and at the conclusion of this conversation, deponent called to said Robbins, asking the said Robbins if he wanted another drink; and deponent then

said, "I want a drink of Coca-Cola," and Mr. Orr hearing this remark, called to the dispenser at the fountain requesting that he serve this deponent with a Coca-Cola. In response to this request the dispenser then drew a product from the same container as drink previously served deponent as and for Coca-Cola had been drawn, and served same without explanation.

Aug. 26-1915, 4:15 p. m. Purchaser, H. M. Lloyd. Witness, C. N. Robbins. Drink served as and for Coca-Cola, drawn from 4th spigot left of carbonated water spigot, labeled "Coke."

Aug. 27-1915, 9:55 a. m. Purchaser, H. M. Lloyd. Witness, C. N. Robbins. Drink served as and for Coca-Cola, drawn from 4th spigot left of carbonated water spigot, labeled "Coke."

Aug. 27-1915, 3:20 p. m. Purchaser, H. M. Lloyd. Witness, C. N. Robbins. Drink served as and for Coca-Cola, drawn from 4th spigot, left of carbonated water spigot, labeled "Coke."

That the product served on each of the above-named occasions, was served as and for Coca-Cola, and without explanation; and was on each occasion, of the same general appearance and color as Coca-Cola syrup.

Deponent makes this affidavit for use in above-stated case. And further, deponent saith not.

H. M. LLOYD. (Seal)

Sworn to and subscribed before me, this 25th day of November, 1916.

(Seal)

ELIZA P. HOUGHTON,

Notary Public, in and for the County of Los Angeles,
State of California.

[Endorsed]: No. C 63 Eq. In equity. In the Dist

Court of the U. S., for the Southern Dist. of California, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co., or Orr Pharmacy, defendants. Affidavit of H. M. Lloyd. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

In the District Court of the United States for the Southern District of California, Southern Division.

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG COMPANY, or ORR PHARMACY,

Defendants.

In Equity. No.

Application for Injunction, &c.

Affidavit of F. C. Peace.

State of Georgia, County of Habersham.

Before me, a notary public in and for said state and county, personally came F. C. Peace, who, being first duly sworn in the above entitled case, on oath deposes and says:

That he is over twenty-one years of age and resides in the city of Atlanta, state of Georgia.

That deponent is and has been for some time past in the employment of the Coca Cola Company, complain-

ant herein; and that during the time hereinafter referred to this deponent had charge, on behalf of the complainant, of the investigation as to such sales of substitute products; and that deponent continued in charge of such investigation until recently.

That the records of complainant showing that samples had been purchased at the place of business of defendants herein during the month of August, 1915, which samples, upon analytical examination being made, were found not to be Coca Cola, the product of complainant; and complainant having continued to receive reports that a substitute was being sold as and for its product by said defendants, this deponent, during the month of March, 1916, requested George H. Reed of the Coca Cola Company of Los Angeles, California, to have an investigation made at the place of business of defendants herein, corner Twelfth and Maple avenues in said city of Los Angeles; that said Reed, in accordance with such request, had such investigation made by O. N. Normandin and C. N. Robbins of Los Angeles and duly reported the result of such investigation to this deponent.

That on March 24th, 1916, this deponent received by express from Los Angeles, California, three samples of a product of a dark brownish color, sealed and labeled, and showing that same had been purchased on March 11th, 14th and 15th, 1916, respectively, as and for Coca Cola by O. N. Normandin in the presence of C. N. Robbins at the place of business of defendants herein.

That deponent, upon receipt of such samples, affixed thereto, in order of purchase above named, the numbers

"2430," "2431" and "2432" respectively for identification by deponent and while so sealed and labeled and in the same condition as when received, with the addition of the numbers above named, deponent, on March 28th, 1916, packed said three samples of syrup and shipped same by Southern Express to Dr. H. C. Fuller, Washington, D. C., for analytical examination.

That on April 12th, 1916, said Dr. H. C. Fuller reported to deponent that said samples so analyzed were not Coca Cola, the product of complainant herein.

Deponent states that he has examined the exhibits attached to the affidavit of H. C. Fuller in this case as Exhibits "C," "D" and "E" respectively and that said exhibits are the samples so received and shipped by deponent to said Dr. H. C. Fuller as hereinabove set forth; and contain the same labels thereon when so received and shipped, with the numbers placed thereon by this deponent.

Deponent makes this affidavit for use in above stated case. And further deponent saith not.

F. C. PEACE.

Sworn and subscribed before me this 30th day of October, 1916.

(Seal)

PLUMER DUCKETT, N. P.

[Endorsed]: No. C 63 Eq. In equity. In the Dist. Court of the U. S. for the Southern District of California, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co., or Orr Pharmacy, defendant. Affidavit of F. C. Peace. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy

clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

In the District Court of the United States for the Southern District of California, Southern Division.

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG COMPANY, or ORR PHARMACY,

Defendants.

In Equity. No.

Application for Injunction, &c.

Affidavit of George H. Reed.

State of California, County of Los Angeles.

Before me, a notary public in and for said state and county, personally came George H. Reed, who, being first duly sworn in above stated case, on oath deposes and says: That he is over twenty-one years of age and resides in the city of Los Angeles, California.

That deponent is and has been for some time past manager of the Coca Cola Company of Los Angeles, deponent as such being in charge of the branch factory of the Coca Cola Company of Atlanta, Georgia, located in said city of Los Angeles.

That various reports having been received by complainant as to the sale of other products by defendants herein as and for Coca Cola, at their place of business in the city of Los Angeles, located corner

Twelfth and Maple avenues, this deponent, at the suggestion of F. C. Peace of the Coca Cola Company, Atlanta, Georgia, undertook to have an investigation made at the place of business of said defendants; and on or about March 11th, 1916, this deponent requested O. N. Normandin of Los Angeles to visit the store of defendants, accompanied by a witness, for the purpose of making test purchases of the product being sold at said place of business as and for Coca Cola, the product of complainant. That said Normandin, in conjunction with C. N. Robbins, beginning with March 11th, 1916, called at said store on several occasions, where purchases were made of such product, reporting to this deponent as such investigation progressed.

That on March 11th, 14th and 15th, 1916, respectively, said Normandin, accompanied by C. N. Robbins, came to the office of this deponent, presenting to this deponent, on each of such occasions, a thermos bottle containing syrup of a dark brownish color and informing deponent that same had been purchased at the store of defendants herein as and for Coca Cola. That this deponent on each of such occasions emptied about four ounces from such thermos bottle into a clean empty bottle and in the presence of said Normandin and Robbins, then securely sealed such bottle on each occasion. That this deponent on each of such occasions placed, under the direction of O. N. Normandin and C. N. Robbins, a label in duplicate, giving full information as to the purchase of such sample, said Normandin and Robbins then attaching their signatures to the label and the duplicate thereof on each occasion. This deponent on each of such occasions attached one

of such labels to the bottle so sealed, delivering the other label to said Normandin.

That this deponent retained said bottles so sealed and labeled in his possession until March 18th, 1916, when this deponent packed said three samples and shipped same while in the same condition as when so delivered to deponent and sealed as above stated to F. C. Peace, Atlanta, Georgia, by Wells Fargo Express.

Deponent has examined the exhibits attached to the affidavit of O. N. Normandin in this case as Exhibits "A," "B" and "C" respectively and that said exhibits are the duplicates of such labels so attached to said bottles as above described.

That deponent has examined the exhibits attached to the affidavit of H. C. Fuller in this case as Exhibits "C," "D" and "E" respectively and that said exhibits are the samples so obtained, sealed and shipped by deponent as above set forth; and now each contain syrup of the same appearance and color as that so placed therein; as well as the original label placed thereon by deponent, deponent identifying such exhibits by said labels.

Deponent makes this affidavit for use in above case. And further deponent saith not.

GEORGE H. REED.

Sworn to and subscribed before me this 25th day of November, 1916.

(Seal)

ELIZA P. HOUGHTON,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. C 63 Eq. In equity. In the Dist.
Court of the U. S., for the Southern District of Cali-

ifornia, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co., or Orr Pharmacy, defendants. Affidavit of Geo. H. Reed. Filed Dec. 11, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

vs.

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG COMPANY, or ORR PHAR-
MACY,

Defendants.

In Equity. No.

Application for Injunction, &c.

Affidavit of C. N. Robbins.

State of Arizona, County of Yavapai.

Before me, a notary public in and for said state and county, personally came C. N. Robbins, who, being first duly sworn in above-stated case, on oath deposes and says:

That he is over twenty-one years of age, and resides in the city of Los Angeles, state of California.

That deponent is, and has been, for some time past, familiar with the product Coca-Cola, manufactured by complainant herein, deponent's familiarity with such

product having been gained through consumption thereof.

That during the latter part of August, 1915, H. B. Pierce of Atlanta, Georgia, was in the city of Los Angeles; and that at the request of said Pierce, deponent in conjunction with H. M. Lloyd of Los Angeles, made several purchases at the store of defendants herein, located corner Twelfth and Maple streets, in said city of Los Angeles, of the product being served at said store as and for Coca-Cola.

That deponent has read the affidavit of said Lloyd in this case as to such purchases so made, and that same is true and correct as to all such purchases; and that same were made at the times, and in the manner therein set forth; the product served on each of such occasions being sold in response to calls for Coca-Cola, and being sold as and for Coca-Cola, without explanation.

That the product so served on each occasion was of the same general appearance and color as Coca-Cola syrup.

That during the month of March, 1916, this deponent at the request of O. N. Normandin of Los Angeles, assisted said Normandin in making purchases at defendants' place of business of the product being sold as and for Coca-Cola.

That deponent has read the affidavit of said Normandin in this case; and that same is true and correct as to all such purchases therein stated to have been made in the presence of this deponent, and that each and all of such purchases were made at the times, and in the manner therein set forth; the product served

on each of such occasions being of the same general appearance and color as Coca-Cola, and being sold without explanation.

That the samples stated in the affidavit of said Normandin to have been purchased in deponent's presence were so purchased on March 11th, March 14th and March 15th, 1916, as therein stated; each of such samples being sold as and for Coca-Cola syrup, and without explanation as to the product furnished.

That immediately following the purchase of each of such samples, same were carried by said Normandin and this deponent to the office of George H. Reed of the Coca-Cola Company, Los Angeles, California, where said Reed, in the presence of this deponent and said Normandin, poured about four ounces of such sample into a clean bottle, and while said syrup was in the same condition as when purchased, sealed and labeled said bottle, deponent and said Normandin each attaching our signatures to the label affixed to each of such bottles on each occasion. Deponent and said Normandin also affixed our signatures to duplicates of each of such labels.

Deponent has examined the exhibits attached to the affidavit of said Normandin in this case as Exhibits "A," "B" and "C," respectively; and that said exhibits are the duplicate labels so prepared and signed at the time of sealing and labeling such bottles.

That deponent has examined the exhibits attached to the affidavit of H. C. Fuller in this case as Exhibits "C," "D" and "E," respectively; and that said exhibits are the samples so purchased, sealed and labeled; and now each contain a portion of syrup of the same

appearance and color as that so purchased; deponent identifying said bottles by the labels thereon.

Deponent makes this affidavit for use in above stated case. And further, deponent saith not.

C. N. ROBBINS.

Sworn to and subscribed before me, this 4th day of December, 1916.

(Seal)

F. A. HATHAWAY,

Notary Public, Yavapai County, State of Arizona.

My commission expires June 10, 1918.

[Endorsed]: No. C 63 Eq. In equity. In the Dist. Court of the U. S. for the Southern District of California, Southern Division. The Coca Cola Co., complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Co., or Orr Pharmacy, defendants. Affidavit of C. N. Robbins. Filed Dec. 18, 1916. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. Candler, Thomson & Hirsch, attorneys and counsellors at law, 1430 Candler Building, Atlanta, Ga.

In the District Court of the United States for the Southern District of California, Southern Division.

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as ORR DRUG COMPANY, or ORR PHARMACY,

Defendants.

In Equity. No. C 63.

Affidavit of W. R. Dickinson.

State of California, County of Los Angeles—ss.

W. R. Dickinson, being first duly sworn, deposes and says that he resides at Los Angeles, California, and has a place of business at Third and Main street in said city.

That he has never sold any Coca Cola or any drink or beverage similar to Coca Cola to Frank L. Orr, Rose Orr, or The Orr Pharmacy, situated at Twelfth street and Maple avenue in said city, excepting one gallon of Coca Cola between December 25, 1916, and Jan. 1, 1917, to the best of my knowledge and belief.

W. R. DICKINSON.

Subscribed and sworn to before me this 4th day of January, A. D. 1917.

(Seal)

EARLE LOPEZ,

Notary Public, Los Angeles County and State of California.

[Endorsed]: No. C-63 Eq. In the United States District Court, in and for the Southern District of California, Southern Division. The Coca Cola Company, complainant, vs. Rose Orr *et al.*, defendants. Affidavit of W. R. Dickinson. Filed Jan. 5, 1917. Wm. M. Van Dyke, clerk; by T. F. Green, deputy clerk. O'Melveny, Stevens & Millikin, suite 825 Title Insurance Bldg., N. E. corner Fifth & Spring Sts., Los Angeles, Cal.

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG COMPANY, or ORR PHAR-
MACY,

Defendants.

In Equity. No. C 63.

Affidavit of Edward Kruell.

State of California, County of Los Angeles—ss.

Edward Kruell, being first duly sworn, deposes and says that he resides at Los Angeles, California, and has a place of business at Sixteenth and Grand avenue in said city.

That to the best of his knowledge and belief he has never sold any syrup of Coca Cola or any drink or beverage similar to syrup of Coca Cola, to Frank L. Orr, Rose Orr, or The Orr Pharmacy, situated at Twelfth street and Maple avenue in said city.

EDWARD KRUELL.

Subscribed and sworn to before me this 5th day of January, A. D. 1917.

(Seal)

A. D. AVERILL,

Notary Public, Los Angeles County and State of California.

[Endorsed]: C-63 Eq. In the United States District Court, in and for the Southern District of California. Southern Division. The Coca Cola Company,

complainant, vs. Rose Orr *et al.*, defendants. Affidavit of Edw. Kruell. Filed Jan. 5, 1917. Wm. M. Van Dyke, clerk; by T. F. Green, deputy clerk. O'Melveny, Stevens & Millikin, suite 825 Title Insurance Bldg., N. E. corner Fifth & Spring Sts., Los Angeles, Cal.

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG COMPANY, or ORR PHAR-
MACY,

Defendants.

In Equity. No. C 63.

Affidavit of Frank L. Orr.

State of California, County of Los Angeles—ss.

Frank L. Orr, being first duly sworn, deposes and says: That he is one of the defendants in the above-entitled action; that he has read the bill of complaint herein and has examined the affidavits filed for an injunction against Rose Orr and this affiant.

This affiant further says that the defendant, Rose Orr, is his wife; that she is doing business and conducting a drug store and soda fountain at a storeroom, being No. 1200 Maple avenue in the city of Los Angeles, namely, at the corner of Twelfth street and Maple avenue in said city. That said Rose Orr is doing business under the fictitious name and style of the "Orr's

Pharmacy." That she has complied with the laws of the state of California by publication and filing certificate of business under a fictitious firm name and that she has been so conducting said business since the 3rd day of May, 1915, and is now so conducting the same at said place. That this affiant is employed to manage said business and carry the same on by the defendant, Rose Orr, and has at all times so done.

This affiant further says that there is in said store a soda fountain where carbonated drinks and other drinks are sold to the public. That said soda fountain has eight spigots, four on each side of the central carbonated water spigot. That to the left of said central carbonated water spigot the inscriptions upon the said spigots beginning at the fourth to the left are as follows: "Lemon"; "Cream"; "W. Cherry"; and "Coke"; that to the right of said central carbonated water spigot the inscription upon the said spigots read, beginning next to said central spigot and reading towards the right, as follows: "Root Beer"; "Rasp'ry"; "Ginger" and "Coca Cola." That said fountain has been thus arranged during all the time since May, 1915, and prior thereto and is now so arranged. That a correct photograph of the face of said fountain is filed herewith, marked "Defendant's Exhibit 1," and the same is hereby referred to for more particulars and in order to show the said fountain with the said spigots and their inscriptions as well as possible.

That at all times the fourth spigot to the right of the central carbonated water spigot has been inscribed as it is now, namely, "Coca Cola," and at all times since May, 1915, and all other times and at the present

time, if any customer asks for Coca Cola that the syrup to be carbonated as such has been drawn from this spigot, namely, the fourth to the right from said carbonated water spigot and from no other.

This affiant expressly says that he has never sold anything than Coca Cola for Coca Cola in said store, nor allowed any such sale to be made by any agent or clerk.

This affiant further says that an enlarged photograph of the last three spigots of the said fountain designated and marked as above stated is also furnished herewith to show the same more clearly, the same being marked "Defendant's Exhibit 2," and being hereby referred to for more particulars.

This affiant further says that he has read a certain affidavit made by O. N. Normandin and dated November 25th, 1916; that neither this affiant nor the said Rose Orr, doing business as aforesaid, have ever sold, or allowed to be sold, at said place of business, namely, at the corner of Twelfth street and Maple avenue, in the city of Los Angeles, any substance or drink as "Coca Cola" which was not in truth and in fact Coca Cola; that the syrup of Coca Cola was always purchased by him and purchased from persons dealing directly with the Coca Cola Company in Los Angeles, or its agent, the Western Wholesale Drug Company, and was in truth and in fact Coca Cola syrup and nothing else and that this affiant never, at any time, nor did, as this affiant is informed and believes, Rose Orr, one of the defendants herein, ever sell, or authorize to be sold at his said place of business, or at any other place, any drink as Coca Cola which was not

Coca Cola, the basis and substance of which, namely, the syrup of Coca Cola, had been purchased from The Coca Cola Company, or its agency in Los Angeles. This affiant expressly says that never, at any time, did he sell or deliver to any person or persons, either the plaintiff herein, or any agent, servant or detective of said plaintiff mentioned in the complaint, or in any affidavit filed with the complaint herein asking said injunction, nor to any other person, any of the syrup used in connection with carbonated water in making the drink, Coca Cola, or any substitute thereof, and this defendant says that he never authorized, and upon information and belief says, said Rose Orr never authorized the sale of any of the said syrup in any way or manner at any time to any person, and never knew of the same being sold and taken away by any person and this affiant believes that all such statements in the bill of complaint herein, or in any affidavit filed herein, is wholly false.

That any statement or statements in the bill of complaint of the plaintiff, The Coca Cola Company, or in any affidavit filed therewith in this court to the contrary of said statement, is wholly false and based upon a misunderstanding of the facts.

This defendant and affiant further says that by the affidavit of H. M. Lloyd filed herein that it is made to appear to this court that in response to requests for drink of Coca Cola that this affiant called to the dispenser of the fountain requesting that he serve the said deponent, namely, said Lloyd, with a Coca Cola. That the said Lloyd states that in response to said request that the said dispenser drew a product from the same

container previously served deponent as and for Coca Cola. That said service was had on the 26th and 27th days of August, 1915, and that one C. N. Robbins was a witness to said transactions; that said affidavit proceeds to state, in each case, that said "Drink served as and for Coca Cola was drawn from 4th spigot left of carbonated water spigot labeled 'Coke.' "

This affiant says that the labels upon his soda fountain have been identical for at least six years last past; that the first spigot to the left of the said carbonated water spigot has been and is now labeled "Coke"; that the fourth spigot to the right of said carbonated water spigot has been at all times and is now labeled "Coca Cola" and that there has never been any change in said matter and that the said Lloyd and other affiants are mistaken as to the facts in said case. Affiant again refers to "Defendant's Exhibits 1 and 2" filed herewith, showing the face of said fountain and the said spigots and their labels.

This affiant states that the bill of complaint in this case was verified on the 22nd day of October, 1916; that the affidavit of O. N. Normandin was verified on the 25th day of November, 1916; that the affidavit of Charles H. Candler was verified on the 27th day of October, 1916; that the affidavit of H. M. Lloyd was verified on the 25th day of November, 1916; that the affidavit of H. B. Pierce was verified on the 2nd day of November, 1916; that the affidavit of S. C. Dobbs was verified on the 27th day of October, 1916; that the affidavit of George H. Reed was verified on the 25th day of November, 1916; that the affidavit of Harry C. Fuller was verified on the 31st day of October, 1916;

that the affidavit of F. C. Peace was verified on the 30th day of October, 1916.

This affiant further says that the alleged purchases referred to in the affidavits herein, of some spurious and inferior drink in the place of Coca Cola, were made upon the following named dates, to-wit, that in the affidavit of O. N. Normandin it is alleged that the said Normandin and one C. N. Robbins were present at the store of the said Rose Orr and that on March 10th, 1916, 3 drinks were taken; also 3 on March 11th, 1916; one on March 14th, 1916, and one on March 15th, 1916; that it is stated that both of said parties were present at each of said times and that the drink had was from the fourth spigot at the left from the central carbonated water spigot of said soda fountain; that in truth and in fact, when sitting in front of said fountain that the fourth spigot at the left is and at all times has been marked "Coca Cola" and that this affiant believes that in truth and in fact said drink was furnished to said parties from said spigot and this affiant alleges of his own knowledge that nothing but true Coca Cola syrup was ever placed in the receptacle drawn from said spigot.

That it is also stated in the affidavit of said Normandin that on March 11th, 14th and 15th, 1916, that samples of syrup were purchased at said store, being drawn, as is alleged, from the same spigot, namely, the fourth spigot to the left from the carbonated water spigot. This affiant expressly says that he never sold syrup from said fountain to any person, nor does he know of it having been sold by any person and he says, upon information and belief, that it was never so sold,

either to the said Normandin or Robbins, or any other person, but that if taken from the fourth spigot to the left of the central carbonated water spigot of said fountain that in truth and in fact the syrup so purchased was true Coca Cola as herein stated.

This affiant further says that in the affidavit of H. M. Lloyd it is alleged that drinks were purchased at said fountain on August 26th, 1915, and August 27th, 1915, by the said Lloyd and C. N. Robbins. That it is alleged that said drinks were taken from the fourth spigot to the left in said fountain. That if said drinks were so taken as alleged that the syrup from which the same was made was, to the knowledge of this affiant, true Coca Cola and nothing else and not an inferior or spurious article, nor anything other than Coca Cola; this affiant further says that in the affidavit of H. B. Pierce it is alleged that two drinks were purchased at said fountain on August 26th, 1915, and two drinks on August 27th, 1915, the said O. N. Normandin being present. That said drinks were alleged to have been taken from the fourth spigot to the left of said fountain and this affiant alleges that if in truth and in fact said drinks were so taken that the syrup from which the same was made was Coca Cola syrup and nothing else.

This affiant further says that he understands from Brent Martin that he was at one time asked by two persons to furnish them with root beer in a bottle and that he did so. That this affiant was not present at said time and does not know in regard to said transaction other than the statements made by said Martin.

This affiant further says that he has heretofore pur-

chased Coca Cola syrup from persons representing to him that they purchased the same from the Western Wholesale Drug Company, the general agent in Los Angeles, as this affiant is informed and believes, of the Coca Cola Company, the plaintiff herein, namely, from R. C. Wrede, 1200 San Pedro street, Los Angeles; from Edward Krull, Sixteenth street and Grand avenue in said city and from Dr. Dickinson at Third and Main streets in the city of Los Angeles.

That this affiant commonly bought by the gallon, whereas the said druggists from whom he purchased, bought from the said agency of The Coca Cola Company by the barrel.

That this affiant always acted in said matter, so far as he knew, in good faith and never offered or attempted to offer any other drink than Coca Cola as and for Coca Cola, nor desired so to do and that he does not believe that any person whatever ever asked for Coca Cola at the store of the Orr's Pharmacy without receiving Coca Cola and that all statements to the contrary in the bill of complaint of the plaintiff, or in any affidavit filed herein, is false and founded upon a mistake.

That this affiant and the said Rose Orr had no desire to mislead the public and no intention of so doing and that in truth and in fact they have not so done.

That this affiant has never been requested by the plaintiff, or its agents, or by any person, to desist from the sale of Coca Cola, or any product sold by this affiant as Coca Cola, nor has the said Rose Orr, so far as known to this affiant, been requested, nor the said Orr's Pharmacy.

This affiant further says that he is still selling Coca Cola at his said fountain drawn from the same spigot as heretofore, viz.: the fourth to the left of the carbonated water spigot as you sit or stand in front of said fountain. That this affiant himself filled a bottle of the syrup of Coca Cola from said spigot and has marked the same "Defendants' Exhibit 3" and he herewith files the same with the court in order to show the color and contents thereof.

And further affiant saith not.

FRANK L. ORR.

Subscribed and sworn to before me this 30th day of December, 1916.

(Seal)

SIDNEY J. PARSONS,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. No. C 63. In the District Court of the United States, Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr & Frank L. Orr, doing business as Orr Drug Company, or Orr Pharmacy, defendants. In equity. Affidavit of Frank L. Orr. Filed Jan. 5, 1917. Wm. M. Van Dyke, clerk; by T. F. Green, deputy clerk. S. J. Parsons, atty. for Frank L. Orr.

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG COMPANY, or ORR PHAR-
MACY,

Defendants.

In Equity.

Affidavit of R. C. Wrede.

State of California, County of Los Angeles—ss.

R. C. Wrede, being first duly sworn, deposes and says: that he resides at Los Angeles, California: he has a place of business at No. 1200 San Pedro street in said city. That this affiant has been in the habit of buying Coca Cola from the general agent of The Coca Cola Company in the city of Los Angeles, namely, The Western Wholesale Drug Company, having a place of business at Second and Los Angeles streets in said city of Los Angeles.

That this affiant has also been in the habit of selling to different dealers and druggists Coca Cola by the gallon, this affiant having purchased the same by the barrel. That among other customers of this ffiant has been the Orr Pharmacy, conducted or managed by Frank L. Orr, the said place of business of said Orr Pharmacy being at Twelfth street and Maple avenue in the said city of Los Angeles. That this affiant has sold considerable amounts of Coca Cola

to the said Orr Pharmacy for a number of years last past and since about 1914 or January, 1915.

This affiant is positive that the product sold to the said Orr Pharmacy by him was the syrup of Coca Cola.

And further this affiant saith not.

R. C. WREDE.

Subscribed and sworn to before me this 29th day of December, 1916.

(Seal)

SIDNEY J. PARSONS,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. No. C 63. In the District Court of the United States, Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr & Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy. In Equity. Affidavit of R. C. Wrede. Filed Jan. 5, 1917. Wm. M. Van Dyke, clerk; by T. F. Green, deputy. S. J. Parsons, atty for defendants.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendants.

In Equity. No. C 63.

Affidavit of George Carman and Paul Sharp.

State of California, County of Los Angeles,—ss.

George Carman and Paul Sharp, being first duly sworn each for himself and not one for the other, deposes and says: that he resides in Los Angeles, California; that within a few days last past, at the instance of S. J. Parsons, attorney for the defendants herein, that he, with the other party to this affidavit, obtained four samples of Coca Cola from different druggists in the city of Los Angeles, as follows:

Sample No. 1 from Weaver's Pharmacy, Store No. 2, situated at the corner of Vernon and South Park avenues in said city.

Sample No. 2 from the Model Pharmacy, situated at 6230 South Main street in said city of Los Angeles.

Sample No. 3 from Amundson Drug Co., situated at the corner of 61st street and Moneta avenue in said city.

Sample No. 4 from R. W. Lewis, druggist. His store is situated at the corner of 7th street and Central avenue in said city of Los Angeles.

These affiants further say that the said druggists, from whom said samples were obtained, claim to have purchased the said syrup as follows:

That said samples Nos. 1 and 4 are claimed to have been purchased from the Western Wholesale Drug Company in the city of Los Angeles, which company, as these affiants are informed and verily believe, is the distributing agent in said city of Los Angeles for The Coca Cola Company, the plaintiff herein; these affiants say, upon information and belief, that said statement is correct.

These affiants further say that the said samples Nos. 2 and 3 were purchased by said druggists from the Brunswig Drug Company, at 501 South Main street in said city of Los Angeles.

These affiants further say that said samples were thereupon, as these affiants are informed and believe, taken to the following named analytical chemists, namely, samples Nos. 1 and 2, purchased as aforesaid, were taken to Arthur R. Maas, 326 San Pedro street, in the city of Los Angeles for analysis; and said samples Nos. 3 and 4 were taken to Smith, Emery & Co. at 245 South Los Angeles street, in said city for analysis.

These affiants further say, upon information and belief, that said syrups were analyzed by said chemists and reports made thereon at the instance of the attorney for defendants herein, and that the said chemists reported thereon on January 2nd, 1917. That copies of the reports of said chemists are hereto annexed, marked "Defendants' Exhibits 4 and 5" and the same are hereby referred to and made a part hereof.

These affiants further say that there is presented to the court herewith four certain bottles, marked "Sample No. 1"; "Sample No. 2"; "Sample No. 3"; and "Sample No. 4," said syrup in said bottles being taken from the identical bottles which were obtained from the said druggists herein mentioned and corresponding with the said analysis so made by said chemists and marked Nos. 1, 2, 3 and 4 as herein stated, said product having been purchased as herein stated as and for Coca Cola and the analysis of which is presented herewith. That said bottles are also marked "Defend-

ants' Exhibits '6,' '7,' '8' and '9'" for identification.

And further these affiants say not.

GEORGE CARMAN.

PAUL SHARP.

Subscribed and sworn to before me this 3rd day of
January, 1917.

(Seal)

SIDNEY J. PARSONS,

Notary Public in and for the County of Los Angeles,
State of California.

(DEFENDANT'S EXHIBIT "4")

(Letterhead of Arthur R. Maas, analytical and manu-
facturing chemist with headings on the side.)

Los Angeles, Cal., Jan. 2, 1917.

Mr. Sidney J. Parsons,

Los Angeles, Cal.

Dear Sir:

I submit below the results of a chemical analysis of
two samples of Coca Cola, sample No. 1 purchased
from Weaver's Pharmacy, 4400 South Park Ave.,
store number 2; sample No. 2 purchased from the
Model Pharmacy, 6230 So. Main St.

The results of these analyses show that Coca Cola is
not uniform.

Yours very truly,

ARTHUR R. MAAS.

ARM: C

Enc.

ANALYSIS.

Sample #1

Specific gravity..... 1.267@64°F
 Phosporic acid (P2O5)..... .211% by weight
 Caffeine181%

Sample #2

Specific gravity..... 1.262@64°F
 Phosporic acid (P2O5)..... .209% by weight
 Caffeine194

(DEFT'S EXHIBIT "5")

(Letterhead of Smith, Emery & Company.)

Los Angeles

Date, Jan. 2, 1917.

Labratory No. 16287-88.

Sample syrups.

Received 12-23-1916. Marked (See below.)

Submitted by Sidnev J. Parsons, attorney, Los Angeles, Cal.

Determinations.

Lab. No.	18287	18288
Mark	#3	#4
Specific gravity ..	1.265	1.214
Caffeine1108%	.0988%
	.64 grains per fluid ounce	.55 grains per fluid ounce
Phosphoric acid (H ₃ PO ₄)	.259%	.237%
	1.43 grains per fluid ounce	1.31 grains per fluid ounce

Respectfully submitted,

(Seal)

SMITH, EMERY & CO.,
 Chemists & Chemical Engineers.

[Endorsed]: Original. No. C 63. In the District Court of the United States, Southern District of California. The Coca Cola Company, complainant, versus Rose Orr & Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy, defendants. In Equity. Affidavit of George Carman and Paul Sharp. Filed Jan. 5, 1917. Wm. M. Van Dyke, clerk; by T. F. Green, deputy clerk. S. J. Parsons, attorney for defendants.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendants.

In Equity.

Affidavit of Brent Martin.

State of California, County of Los Angeles,—ss.

Brent Martin being first duly sworn says: that he is the identical Brent Martin mentioned in the affidavit of O. N. Normandin and sworn to on the 25th day of November, 1916, and in the Exhibits "A," "B" and "C" annexed thereto.

That this affiant was formerly in the employ of Frank Orr.

This affiant says that never, to his knowledge, did he, while in the employ of the said Orr, or anyone

else, sell either to the said O. N. Normandin or to C. N. Robbins, or to anyone else, Coke, or any other drink or substance as and for Coca Cola. If any such thing ever occurred, which this affiant does not believe, that it was a mere error or mistake. That he never intended so to do and never was instructed so to do, either by Orr or anyone else and that the said Normandin is mistaken in his statements made in regard thereto.

This affiant further says that he was well acquainted with the soda fountain in the drug store of the defendants Rose Orr and Frank Orr situated at the corner of Twelfth street and Maple avenue in the city of Los Angeles. That the carbonated water spigot, through which the drinks drawn from the fountain are carbonated, is in the middle of the fountain; that the first spigot to the right of said water spigot was labeled "Coke" and that the fourth spigot to the left of said carbonated water spigot was labeled "Coca Cola." That this was true during all the time this affiant worked in said store.

That this affiant never knew anyone at said store to sell something else in place of Coca Cola and he does not believe that any such thing occurred at any time and that this affiant most certainly did not.

This affiant further says that he never sold syrup, either Coca Cola, Coke, or any other syrup contained in said fountain to any person to be carried away from the store, but only sold carbonated drinks in the usual way, as is done at said fountains, the same to be drank upon the premises and he never remembers to have filled any thermos bottle for the said Normandin,

or anyone else, except at one time with root beer, and he is confident that he would have remembered the fact had such a strange and unusual request been made of him. That the said Normandin is certainly mistaken in said matter so far, at any rate, as this affiant is concerned and this affiant never knew anyone employed in said store, while he was there, to sell syrup from the fountain to be taken away from the store, nor did he ever hear that such a thing had been done until this fact was called to his attention by the affidavits in this case, except that at one time he sold some root beer to be carried away.

And further affiant saith not.

BRENT MARTIN.

Subscribed and sworn to before me this 28th day of December, 1916.

(Seal)

SIDNEY J. PARSONS,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. In the District Court of the United States, Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr and Frank Orr, doing business as Orr Drug Company or Orr Pharmacy, defendants. In Equity. Affidavit of Brent Martin. Filed Jan. 5, 1917. Wm. M. Van Dyke, clerk; by T. F. Green, deputy clerk. S. J. Parsons, attorney for Frank Orr.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

THE COCA COLA COMPANY,

Complainant,

vs.

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendants.

Affidavit of Rose Orr.

State of California, County of Los Angeles,—ss.

Rose Orr, being first duly sworn, deposes and says that she is one of the defendants in the above entitled action; that she is the owner and proprietor of Orr's Pharmacy, situated at No. 1200 Maple avenue, in the city of Los Angeles, California, namely at the corner of 12th street and Maple avenue in said city; that she has owned said business since May, 1915, and has done business under the fictitious name of Orr's Pharmacy, being authorized so to do pursuant to law in compliance with the statutes of the state of California.

That she has knowledge of the complaint in this matter and the affidavits therein.

This affiant says that said business has been conducted for her by her agent and manager, Frank L. Orr, her husband; that the said Frank L. Orr is also one of the defendants herein.

This affiant says that she has little or nothing to do with the conduct of said business and is seldom at said store, but that she knows in regard to the facts in this

case from observation and from inquiry of her said manager and agent, Frank L. Orr.

This affiant expressly states that she has never authorized her said agent, Frank L. Orr, or any person in her employ to sell any product at the soda fountain in said store as and for Coca Cola which was not in truth and in fact Coca Cola, and that if any such thing has been done, which this affiant does not believe, it was done without her knowledge or consent.

This affiant says that she is acquainted with the statements made by the said Frank L. Orr in his affidavit herein and is acquainted with the allegations of the answer herein, verified by herself, and that she verily believes, upon information and belief, that all the allegations in said answer and in the said affidavit of said Frank L. Orr are true.

This affiant has no further knowledge as to the matters in dispute herein; and further affiant saith not.

ROSE ORR.

Subscribed and sworn to before me this 30th day of 30th December, 1916.

(Seal)

SIDNEY J. PARSONS,

Notary Public in and for Los Angeles County, State of California.

[Endorsed]: Original. No. C 63. In the District Court of the United States, Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr & Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy. In Equity. Affidavit of Rose Orr. Filed Jan. 5, 1917. Wm. M. Van Dyke, clerk; by T. F. Green, deputy clerk. S. J. Parsons, atty. for defendants.

*In the District Court of the United States for the
Southern District of California, Southern Di-
vision.*

THE COCA COLA COMPANY,

Complainant,

v.

ROSE ORR and FRANK L. ORR, doing business
as ORR DRUG CO., or ORR PHARMACY,

Defendants.

In Equity. No. C 63.

Affidavit of W. B. Pinney.

State of California, County of Los Angeles—ss.

W. B. Pinney, being first duly sworn, deposes and says: That he is and at all times herein mentioned has been employed as chief clerk for the law firm of O'Melveny, Stevens & Millikin, counsel for the complainant herein; that on the 8th day of February, 1917, affiant tendered and offered to S. J. Parsons, Esq., counsel for defendants herein, in the office of said S. J. Parsons, Esq., the sum of two dollars and eighty cents (\$2.80) lawful money of the United States, said sum being the amount of the defendants' clerk's costs herein.

That said S. J. Parsons, Esq., did then and there refuse to accept said sum.

Affiant further states that on the 9th day of February, 1917, he requested said S. J. Parsons, Esq., to tell affiant how much defendants' taxable costs other than said sum of two dollars and eighty cents (\$2.80) hereinabove referred to, amounted to and that said S. J. Parsons, Esq., did then and there refuse to give affiant this information.

W. B. PINNEY.

Subscribed and sworn to before me this 9th day of February, 1917.

(Seal)

NELLIE LEMERT,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: No. C 63. In the United States District Court, in and for the Southern District of California, Southern Division. The Coca Cola Company, complainant, v. Rose Orr and Frank L. Orr, doing business as Orr Drug Co., or Orr Pharmacy, defendants. Affidavit. Filed Feb. 9, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. O'Melveny, Stevens & Millikin, suite 825 Title Insurance Bldg., N. E. corner Fifth & Spring Sts., Los Angeles, Cal., attorneys for complainant.

At a stated term, to-wit, the July term, A. D., 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Friday, the fifth day of January, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable Benjamin F. Bledsoe, district judge.

THE COCA COLA COMPANY,

Complainant,

vs.

ROSE ORR, *et al.*,

Defendants.

In Equity. No. C 63.

Copy of Minute Order.

This cause coming on this day to be heard under and pursuant to the order heretofore made and entered herein that defendants show cause why an injunction *pendente lite* should not be issued herein pursuant to the prayer of the bill of complaint; H. M. Stevens, Esq, appearing as counsel for complainant, Sidney J. Parsons, Esq., appearing as counsel for defendants; and said rule to show cause and application for injunction having been argued, in opposition thereto, by Sidney J. Parsons, Esq., appearing as counsel for defendants; and said rule to show cause and application for injunction having been argued, in opposition thereto, by Sidney J. Parsons, Esq., of counsel for defendants; and defendants having offered certain exhibits, which are admitted in evidence in their behalf, to-wit: Deft. Ex. A, photograph of stand and dispenser, label Frank L. Orr, druggist, 12th street and Maple avenue, Los Angeles; Deft. Ex. B, photograph of same stand and dispenser as that photographed in Deft. Ex. A, with fountain attached, etc.; Deft. Ex. C, bottle, containing fluid from Weaver's Pharmacy Store No. 2, Vernon and Park avenues; Deft. Ex. D, bottle containing fluid from Model Pharmacy, 6230 South Main street; Deft. Ex. E, bottle containing fluid from source not indicated; Deft. Ex. F, bottle containing fluid from Smundson Drug Company, 61st and Moneta avenue; and Deft. Ex. G, bottle containing fluid from R. W. Lewis, druggist, 7th St. and Central avenue; and said rule to show cause and application for injunction having been further argued, in support thereof, by H. M. Stevens, Esq., of counsel

for complainant; it is by the court ordered that complainant's application for an injunction as prayed for be, and the same hereby is denied, without prejudice to its renewal, if complainant shall be so advised, and it is further ordered that the order to show cause and temporary restraining order herein be, and the same hereby is vacated, set aside and dissolved.

[Endorsed]: No. C 63. Equity. United States District Court, Southern District of California, Southern Division. Coca Cola Company, complainant, vs. Rose Orr, *et al.*, defendants. Copy of Minute Order. Filed Feb. 17, 1917. Wm. M. Van Dyke, clerk; by, deputy clerk.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO., or ORR PHARMACY,
Defendants.

In Equity.

**Application for Injunction and Upon Motion to Dismiss
Plaintiff's Bill.**

State of California, County of Los Angeles,—ss.

Sidney J. Parsons, being first duly sworn, deposes and says: that he is the attorney and counsel for the defendants in the above entitled action; that this action is one for an injunction and was begun or filed on the 12th day of December, 1916; that an order to show

cause why a preliminary injunction should not be issued herein was issued therein and said matter was set for hearing on the 18th day of December, 1916; that said motion for preliminary injunction was, by the court, continued to be heard on the 2nd day of January, 1917.

That said matter was taken up at said time before the Hon. Benjamin F. Bledsoe, one of the judges of said court, and the same was heard upon the bill of complaint; the answer of said defendants; and numerous affidavits and exhibits; in connection therewith, and said cause was fully argued on the part of the said plaintiff and submitted to the court; that thereupon and after said hearing the court entered its interlocutory decree, or its decretal order, denying the said plaintiff's motion and application for a preliminary injunction, but permitting the said plaintiff to renew said motion if so advised at any time; and this affiant further says that thereby and by said decretal order or interlocutory decree the said court granted to the said defendants a permissive injunction or right to continue their business without the interference of an injunction as asked for by the said plaintiff.

This affiant further says that thereafter and on the 8th day of January, 1917, the said cause was, by the said plaintiff, through its attorneys, set down for trial in said court for the 16th day of February, 1917, at 10 o'clock a. m. of said day and notice of trial, namely, of said order setting said cause for trial, was served upon the attorney for said defendant on January 23rd, 1917.

That thereupon and immediately after the setting

of the said cause this affiant, on behalf of said defendants, began to prepare for the trial of said cause. That this affiant knows of his own knowledge that the said order and permissive right or injunction to continue the said business of said defendants as theretofore conducted is to said defendants a valuable and important right and that the right to have said cause tried in said court is to said defendants a valuable and important right. That this affiant has been informed by the counsel and attorney for plaintiff that if said cause is dismissed the said plaintiff intends to immediately begin an action in the Superior Court of Los Angeles county against the said defendants upon the same identical cause of action and state of facts herein involved and that the purpose of seeking the dismissal of this case is that the said plaintiff desires to transfer said cause of action into the state court of the state of California and to prosecute the same therein. That this affiant believes that all the facts in said matter were before this court upon the said hearing for preliminary injunction and this affiant says that the learned judge who heard said cause stated to plaintiff's attorney and counsel that if said cause were submitted to him upon the facts appearing from affidavits and exhibits before the court, that the decision would be, and must be, as he, the said judge, viewed the case, in favor of the said defendants.

This affiant hereby refers to the bill of complaint herein; the answer of the defendants and to each and all the affidavits, both of the plaintiff and said defendants herein, together with all exhibits annexed to said affidavits or filed herein and makes the same and

each and all of the same and every part thereof a part of this affidavit as exhibits.

This affiant also refers to all orders, notices of motion and returns thereof and to the entire records in this case, and makes the same and the whole thereof a part of this affidavit as exhibits.

Wherefore, the defendants pray the court that plaintiff's motion to dismiss said cause be denied; or that in case said cause is dismissed that the same be dismissed upon its merits, and said defendants will ever pray.

SIDNEY J. PARSONS.

Subscribed and sworn to before me this 2nd day of February, 1917.

(Seal)

NEIL S. McCARTHY,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. No. C 63. In the District Court of the United States, for the Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr and Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy, defendants. In Equity. Application for Injunction and Upon Motion to Dismiss Plaintiff's Bill. Copy within rec'd this 5th day of Feb., 1917. Candler, Thompson & Hirsch, O'Melveny, Stevens & Millikin, Walter K. Tuller, solicitors for complainant. Filed Feb. 5, 1917. Wm. M. Van Dyke, clerk; Geo. W. Fenimore, deputy. S. J. Parsons, attorney for defendant.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

THE COCA COLA COMPANY,

Complainant,

vs.

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendants.

Notice of Motion to Dismiss.

To the Defendants Above Named and Sidney J. Par-
sons, Their Attorney:

You and each of you will please take notice, that on
Monday, the 5th day of February, 1917, at the hour
of ten o'clock a. m., or as soon thereafter as counsel
can be heard, complainant will move the above entitled
court for an order dismissing said cause upon the pay-
ment of the defendants' costs herein, without prejudice
to the bringing of another cause on the same alleged
facts by complainant. Said motion will be made on
the ground that the defendants do not seek any affirma-
tive relief in said cause and that no decree has, up to
the present time, been made or given in said cause.
Said motion will be based on all the records and files
herein, and upon this notice of motion. Dated January
31, 1917.

CANDLER, THOMPSON & HIRSCH,
O'MELVENY, STEVENS & MILLIKIN.
WALTER K. TULLER,

Attorneys for Complainant.

[Endorsed]: Orig. No. C 63. Eq. In the United

States District Court, in and for the Southern District of California, Southern Division. The Coca Cola Company, complainant, vs. Rose Orr and Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy, defendant. Notice of Motion to Dismiss. Received copy of the within Notice this 31 day of Jan., 1917. S. J. Parsons, attorney for defendant. Filed Jan. 31, 1917. Wm. M. Van Dyke, clerk; by Leslie S. Colyer, deputy clerk. O'Melveny, Stevens & Millikin, suite 825 Title Insurance Bldg., N. E. corner Fifth & Spring Sts., Los Angeles, Cal., attorneys for complainant. G. W. F.

At a stated term, to-wit, the January term, A. D. 1917, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the city of Los Angeles, on Monday, the fifth day of February, in the year of our Lord one thousand nine hundred and seventeen. Present: The Honorable Oscar A. Trippet, district judge.

COCA COLA COMPANY,

Complainant,

vs.

ROSE ORR, *et al.*,

Defendants.

Equity. No.C 63.

Copy of Minute Order.

This cause coming on this day to be heard on complainant's motion to dismiss this cause without prejudice; Alexander MacDonald, Esq., appearing on

behalf of Walter K. Tuller, Esq., of counsel for complainant; Sidney J. Parsons, Esq., appearing as counsel for defendants; and this cause having been continued until the hour of 2 o'clock p. m. of this day for said hearing, and having been again called for the same at the hour of 2 o'clock p. m.; and counsel being present as before; and said motion having been argued, on behalf of complainant by Alexander MacDonald, Esq., appearing as aforesaid on behalf of Walter K. Tuller, Esq., of counsel for complainant, and on behalf of defendants by Sidney J. Parsons, Esq., of counsel for defendants; it is ordered that complainant's said motion to dismiss this cause without prejudice be, and the same hereby is granted to which ruling of the court, on motion of defendants and by direction of the court, exceptions are hereby noted herein on behalf of said defendants.

[Endorsed]: No. C 63 Equity. United States District Court, Southern District of California, Southern Division. Coca Cola Company, complainant, vs. Rose Orr, *et al.*, defendants. Copy of Minute Order. Filed Feb. 17, 1917. Wm. M. Van Dyke, clerk; by, deputy clerk.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

THE COCA COLA COMPANY,

Complainant,

v.

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,

Defendants.

In Equity. No. C 63.

Decree Dismissing Bill Without Prejudice.

Complainant having moved the above entitled court on the 5th day of February, 1917, for an order dismissing said cause upon the payment of defendants' costs herein without prejudice to the bringing of another suit on the same alleged facts by complainant, and said motion having been argued by counsel and the court having granted said motion, and it appearing to the court from the affidavit of W. B. Pinney, filed herein, that a tender and offer of payment of the defendants' clerk's costs herein amounted to the sum of two dollars and eighty cents (\$2.80) has been made to said defendants through their counsel, S. J. Parsons, Esq., and that said S. J. Parsons, Esq., has refused to accept said sum. and it further appearing that said sum of two dollars and eighty cents (\$2.80) has been deposited with the clerk of said court for the use and benefit of said defendants in paying said costs, and it further appearing that such further taxable costs as said defendants may have incurred in said cause have not been ascertained, and the court being fully advised in the premises.

Now, therefore, it is hereby ordered, adjudged and decreed that complainant's bill of complaint herein be and the same is hereby dismissed without prejudice to the bringing of another suit or cause of action by complainant on the same alleged facts, and it is further ordered, adjudged and decreed that defendants do have and recover of complainant their costs herein incurred (excepting the sum of two dollars and eighty cents

(\$2.80) hereinabove referred to) taxed in the sum of \$.....

Dated February 13, 1917.

OSCAR A. TRIPPET,

Judge.

Decree entered and recorded Feb. 13, 1917. Wm. M. Van Dyke, clerk; by Geo. W. Fenimore, deputy.

[Endorsed]: No. C 63. In the United States District Court, in and for the Southern District of California, Southern Division. The Coca Cola Company, complainant, v. Rose Orr and Frank L. Orr, doing business as Orr Drug Co. or Orr Pharmacy, defendants. Decree Dismissing Bill Without Prejudice. Received copy of the within Decree this 9th day of February, 1917. S. J. Parsons, attorney for defendants. Filed Feb. 13, 1917. Wm. M. Van Dyke, clerk; Geo. W. Fenimore, deputy. O'Melveny, Stevens & Millikin, suite 825 Title Insurance Bldg., N. E. corner Fifth & Spring Sts., Los Angeles, Cal., attorneys for complainant.

Whereupon, said bill of complaint and application for injunction, subpoena *ad respondendum*, order to show cause why preliminary injunction should not issue, answer, copy of order of court denying complainant's application for injunction, etc., application for injunction, etc., copy of order sustaining motion to dismiss without prejudice, and said decree of dismissal are hereto annexed; the said decree of dismissal being duly

signed, filed and enrolled pursuant to the practice of said District Court.

Attest, etc.

(Seal)

WM. M. VAN DYKE, Clerk.

By T. F. Green,

Deputy Clerk.

[Endorsed]: No. C 63 Equity. In the District Court of the United States for the Southern District of California, Southern Division. The Coca Cola Co., vs. Rose Orr, *et al.*, etc. J. enrolled papers. Filed Feby. 17, 1917. Wm. M. Van Dyke, clerk; by T. F. Green, deputy clerk. Recorded Eq. Jl. No. 4, page 376.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,

Defendants.

In Equity.

Petition on Appeal.

The above named defendants, conceiving themselves aggrieved by the decree made and entered on the day of February, 1917, in the above entitled cause, dismissing the said cause without prejudice, do hereby appeal from said order and decree to the United States Circuit Court of Appeals of the Ninth Circuit, for the reasons specified in the assignment of errors,

which is filed herein, and said defendants pray that this appeal may be allowed, and that a transcript of record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

S. J. PARSONS,
Attorney for Defendants.

Dated 14th day of February, 1917.

[Endorsed]: No. C 63. In the District Court of the United States, for the Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr and Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy, defendants. In Equity. Petition on Appeal. Filed Feb. 14, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. S. J. Parsons, attorney for defendants.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*

THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,

Defendant.

In Equity.

Assignment of Errors.

Now on this 14th day of February, 1917, came the defendants by their counsel and solicitor, Sidney J. Parsons, and show that the order made and entered

in the above entitled cause on the 5th day of February, 1917, granting the motion to dismiss plaintiff's bill of complaint, and the decree entered in said cause on the 13th day of February, 1917, by which it was ordered, adjudged and decreed that the said bill of complaint be dismissed, and each of the same, are erroneous and unjust to said defendants and each of them upon the following grounds:

First. That it appears by the said plaintiff's bill of complaint that this court has jurisdiction in said matter, and the said plaintiff and complainant so alleges; that said bill of complaint was one for injunction for unfair trade or the infringement of a copyright by user, which copyright the defendants were charged with having infringed by selling something else as and for "Coca Cola."

Second. That the said plaintiff and complainant came into court and asked for a preliminary injunction and filed affidavits and exhibits in support of its motion, and thereby put the said defendants to great cost and expense in preparing their defense herein, and that the said plaintiff and complainant thereby selected their forum, the said plaintiff being a non resident of the state of California, and the defendants residing in said state.

Third. That said matter was fully heard before this court and said preliminary injunction was denied; that thereafter the said plaintiff and complainant, through its attorneys and solicitors, set said cause for trial for February 16, 1917; that thereupon the defendants began the preparation for said trial and were put to still further cost and expense in said matter.

Fourth. That by said proceeding and trial of said motion for preliminary injunction, and the setting of the said cause for trial, the said court in part determined said cause and made therein a decretal order sustaining the right of the said defendants to continue their business as theretofore conducted until the further order of said court, or the final determination of said cause, and that the said defendants thereby acquired the right to have said matter so continued and to have said matter finally determined in said court without being subjected to litigation in some other or different court as threatened by the said plaintiff.

Fifth. That the said plaintiff had no right, after thus proceeding in said cause, to have said cause dismissed and to harrass said defendants by an action or actions brought in the courts of the state of California; that said proceedings were taken by said plaintiff and complainant as a trifling with the court, and unjust and inequitable, and contrary to the law and the rules of equity, and repugnant to the dictates of justice, and that the order of said court dismissing said cause is contrary to law, unjust and inequitable, and that the decree entered in pursuance of said order dismissing said cause is against law, unjust and inequitable, and that the said defendants should have been allowed to have said matter heard in the forum selected by the plaintiff, and that the said order and decree in pursuance thereof, dismissing said cause, should be reversed, and that said court should retain jurisdiction of said cause, to prevent a multiplicity of suits and to do full justice between said parties.

Wherefore the defendants pray that said order and

decree be reversed and the said District Court of the United States for the Southern District of California, Southern Division, be directed to set aside the said decree and order of dismissal and to reinstate the said cause, and that the same be tried; or that said cause be reversed and the said District Court be instructed to enter a decree dismissing the said cause on its merits, or that the Circuit Court of Appeals shall reverse the said cause and render a proper decree upon the record, and said defendants and their solicitors will ever pray.

S. J. PARSONS,
Solicitor.

Dated Los Angeles, Cal., February 14th, 1917.

[Endorsed]: No. C 63. In the District Court of the United States, for the Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr, and Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy, defendants. In Equity. Assignment or Errors. Filed Feb. 14, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. S. J. Parsons, attorney for defendants.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,

Defendants.

In Equity.

Order Allowing Appeal and Fixing Amount of Bond.

It is hereby ordered that the petition of the defendants asking that they be allowed to appeal herein to the United States Circuit Court of Appeals of the Ninth Circuit, be and the same is hereby granted upon the said defendants giving bond in the sum of \$250.00 to the effect that if the said defendants in error shall prosecute said appeal with effect and answer all damages and costs if they fail to make their said appeal good, then the said obligation to be void, otherwise to remain in full force and effect; the said bond to be approved by the clerk of this court.

Dated this 14 day of February, 1917.

OSCAR A. TRIPPET,

Judge.

[Endorsed]: No. C 63. In the District Court of the United States, for the Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr and Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy. In Equity. Order Allowing Appeal and Fixing Amount of Bond. Filed Feb. 14, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. S. J. Parsons, attorney for defendants. Eq. OB 239.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

vs.

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,

Defendants.

In Equity.

Bond on Appeal.

Know all men by these presents, that the United States Fidelity & Guaranty Company, a corporation existing under and by virtue of the laws of the state of Maryland, and duly licensed to transact business in the state of California, is held and firmly bound unto The Coca Cola Company, complainant in the above entitled cause, in the penal sum of two hundred fifty and no/100 dollars (\$250.00), to be paid to The Coca Cola Company, its successors and assigns and legal representatives, for which payment well and truly to be made, the United States Fidelity & Guaranty Company binds itself, its successors and assigns firmly by these presents.

The condition of the above obligation is such, that whereas, Rose Orr and Frank L. Orr, doing business as Orr Drug Co. or Orr Pharmacy, defendants in the above entitled suit, are about to take an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the order made on February 5th, 1917, and the decree made, rendered and entered on the 13th day of February, 1917, by the United States District Court, for the Southern District of California, Southern Division, in the above entitled cause.

Now therefore, if the above named appellants shall prosecute said appeal to effect, and answer all costs which may be adjudged against them, if they fail to make good their appeal, then this obligation shall be void, otherwise to remain in full force and effect.

Dated at Los Angeles, California, this 14th day of February, 1917.

UNITED STATES FIDELITY & GUARANTY
COMPANY,

(Seal)

By Frank M. Kelsey,
Its Attorney in Fact.

Approved 2/14/17.

TRIPPET, Judge.

State of California, County of Los Angeles,—ss.

On this 14th day of February, in the year one thousand nine hundred and seventeen, before me, Hallie D. Winebrenner, a notary public in and for said county and state, residing therein, duly commissioned and sworn, personally appeared Frank M. Kelsey, known to me to be the duly authorized attorney in fact of the United States Fidelity and Guaranty Company, and the same person whose name is subscribed to the within instrument as the attorney in fact of said company, and the said Frank M. Kelsey duly acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto as principal and his own name as attorney in fact.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal) HALLIE D. WINEBRENNER,

Notary Public in and for Los Angeles County, State of California.

[Endorsed]: No. C 63. In the District Court of the United States, Southern District of California, Southern Division. The Coca Cola Company, complainant, vs. Rose Orr, *et al.*, defendants Bond on Appeal.

Filed Feb. 14, 1917. Wm. M. Van Dyke, clerk; by R. S. Zimmerman, deputy clerk. United States Fidelity and Guaranty Company, Frank M. Kelsey, general agent, 700-703 Hibernian Building, Los Angeles, Cal.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,
Defendants.

In Equity.

Praecipe for Transcript of Record.

To the Clerk of Said Court:

Sir: Please issue and prepare for the transcript on appeal to the Circuit Court of Appeals, the bill of complaint, answer, the copy of the minute order denying the preliminary injunction, together with all affidavits used thereon, both by the plaintiff and the defendant, a copy of the notice of motion to dismiss said action, together with the affidavit on the part of the defendants in resisting the same and the copy of the minute order, or other order, dismissing said case, and a copy of the final decree dismissing said case, also the petition for order allowing appeal, assignment of errors, order allowing appeal and fixing bond, bond on appeal, citation on appeal, and such other and further documents relating to the said cause on file, and that the same be sent up to the Circuit Court of

Appeals, and that the same may be printed as the defendants' transcript.

Los Angeles, Cal., February 14th, 1917.

S. J. PARSONS,
Attorney for Defendants.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

VERSUS

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG CO. or ORR PHARMACY,
Defendants.

In Equity.

AFFIDAVIT OF SERVICE.

State of California, County of Los Angeles,—ss.

Sidney J. Parsons, being first duly sworn, deposes and says: that he is counsel and attorney for the defendants in the above entitled action; that on the 14th day of February, 1917, at 2:30 o'clock p. m. of said day he served the praecipe in the above entitled action upon the solicitors and attorneys for the plaintiff, by delivering to and leaving the same with Messrs. O'Melveny, Stevens and Millikin, at their office, 811 to 826 Title Insurance Building, corner of Fifth & Spring streets in the city of Los Angeles, California, in the manner following, to-wit, that a true copy of said praecipe was left with their stenographer, a person of legal age, in the presence of one of their clerks, Mr. Macdonald and Mr. Stevens being absent from the office at the time; that thereafter Henry Stevens, Esq., called

this affiant on the telephone and stated that he preferred to have Mr Macdonald attend to the matter. That this affiant was unable to find Mr. Macdonald, but that said papers were left with the solicitors and attorneys for said plaintiff and this affidavit is made accordingly.

Further this affiant sayeth not.

SIDNEY J. PARSONS.

Subscribed and sworn to before me this 14th day of February, 1917.

(Seal)

NEIL S. McCARTHY,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: Original. No. C 63. In the District Court of the United States, for the Southern District of California, Southern Division. The Coca Cola Company, complainant, versus Rose Orr and Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy, defendants. In Equity. Praeipie For Transcript of Record. Filed Feb. 14, 1917. Wm. M. Van Dyke, clerk; by Chas. N. Williams, deputy clerk. S. J. Parsons, attorney for defendants.

*In the District Court of the United States, for the
Southern District of California, Southern Division.*
THE COCA COLA COMPANY,

Complainant,

v.

ROSE ORR and FRANK L. ORR, doing business as
ORR DRUG COMPANY or ORR PHAR-
MACY,

Defendants.

In Equity. No. C 63.

Praeipe of Complainant for Additions to Transcript.

To the Clerk of Said Court:

Sir: Please issue and prepare and insert in the transcript heretofore ordered and requested by the defendants herein the following:

1. The affidavit of W. B. Pinney, filed herein on February 9, 1917.

CANDLER, THOMSON & HIRSCH,
O'MELVENEY, STEVENS & MILLIKIN,
WALTER K. TULLER,

Solocitors for Complainant.

[Endorsed]: Original. No. C 63. In the United States District Court, in and for the Southern District of California, Southern Division. The Coca Cola Company, complainant, v. Rose Orr and Frank L. Orr, doing business as Orr Drug Company or Orr Pharmacy. Praeipe of Complainant for Additions to Transcript. Received copy of the within Praeipe this 19 day of Febry., 1917. S. J. Parsons, attorney for defendants. Filed Feb. 19, 1917. Wm. M. Van Dyke, clerk; by Leslie S. Colyer, deputy clerk. O'Melveney, Stevens & Millikin, suite 825 Title Insurance Bldg., N. E. corner Fifth & Spring Sts., Los Angeles, Cal., attorneys for complainant.

